### NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by 1st submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the Register according to the schedule of deadlines for Register publication.

Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for adoption, amendment, or repeal of any rule. A.R.S. §§ 41-1013 and 41-1022.

### NOTICE OF PROPOSED RULEMAKING

### TITLE 6. ECONOMIC SECURITY

### CHAPTER 5. DEPARTMENT OF ECONOMIC SECURITY - SOCIAL SERVICES

### **PREAMBLE**

ı.	Sections Affected	Dulamaking Astion
٠.	R6-5-5010	Rulemaking Action Amend
	R6-5-5227	Amend
	R6-5-5821	Amend
	R6-5-5907	Amend
	R6-5-7039	***************************************
	Article 75	Amend
	R6-5-7501	New Article
	R6-5-7502	New Section
	R6-5-7503	New Section
	R6-5-7504	New Section
		New Section
	R6-5-7505	New Section
	R6-5-7506	New Section
	R6-5-7507	New Section
	R6-5-7508	New Section
	R6-5-7509	New Section
	R6-5-7510	New Section
	R6-5-7511	New Section
	R6-5-7512	New Section
	R6-5-7513	New Section
	R6-5-7514	New Section
	R6-5-7515	New Section
	R6-5-7516	New Section
	R6-5-7517	New Section
	R6-5-7518	New Section
	R6-5-7519	New Section
	R6-5-7520	New Section

2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statutes: A.R.S. §§ 8-126(4)(a), 8-503(A)(4)(b), 41-1003, 41-1954(A)(3), 41-1967(I), and 46-134(A)(12)

Implementing statutes: A.R.S. §§ 8-126, 8-506, 8-509, 41-1967(D), and (E), 41-1991 through 41-1993, and 46-134(A)(2)(b)

3. The name and address of agency personnel with whom persons may communicate regarding the rule:

Name:

Vista Thompson Brown

Address

Department of Economic Security P.O. Box 6123, Site Code 837A

Phoenix, Arizona 85005

Telephone:

(602) 542-6555

Fax:

(602) 542-6000

### 4. An explanation of the rule, including the agency's reasons for initiating the rule:

This rulemaking package arises out of rulemaking docket openings in 1 A.A.R. 1558, September 8, 1995, and 3 A.A.R. 3261, November 14, 1997.

The Department lacks an appropriate set of rules to govern appeals and hearings arising out of disputes over licensing and certification matters for foster homes, child care providers, and adoption agencies. These appeals and hearings are currently governed by 6 A.A.C. 5, Article 24. Article 24 was promulgated in 1978 and is outdated. Moreover, it is written to govern disputes over the provision of social services benefits, rather than disputes over regulatory matters.

In this rulemaking, the Department plans to adopt a comprehensive set of rules governing appeals and hearings in the following areas: denial, revocation, or suspension of an adoption agency license, a foster home license, or a certificate for a family child care home provider, and removal of a child care provider from the child care resource and referral system. The rulemaking package also includes the licensing and certification appeals rules that currently contain cross references to Article 24, so that the cross references can be amended.

# 5. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable.

### 6. The preliminary summary of the economic, small business, and consumer impact:

This rulemaking effort will not impose any significant costs on any person or group, other than the minor costs associated with promulgation and publication of the rulemaking package. Any minor costs are outweighed by the benefits of having a clear, concise, and understandable set of rules to govern appeals and hearings of social services regulatory matters. The public, the regulated social service entities, and the Department will all benefit from this rulemaking effort.

# 7. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name:

Vista Thompson Brown

Address:

Department of Economic Security P.O. Box 6123, Site Code 837A Phoenix, Arizona 85005

Telephone:

(602) 542-6555

Fax:

(602) 542-6000

# 8. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

A person may submit written comments on the proposed rules or economic impact statement by submitting the comments to the person specified in paragraph #3 no later than the close of record, which is scheduled for Friday, January 30, 1998, at 5 p.m.

Oral proceedings are scheduled as follows:

PHOENIX

Date:

Time:

Location: Address:

Coordin, Program Mgr.

TUCSON

Date: Time: Location:

LOCATION:

Address:

Coordin. Program Mgr.

**FLAGSTAFF** 

Date: Time: Location:

Address: Coordin. Program Mgr.

YUMA Date: Time: DISTRICT I:

Thursday, January 29, 1998

1:30 P.M.

DES Conference Room

815 North 18th Street, Phoenix Carla Van Cleve (602) 846-0001

DISTRICT II:

Thursday, January 29, 1998

1:30 P.M.

DES Conference Room

400 West Congress #420, Tucson Henry Granillo (520) 628-6810, ext. 216

**DISTRICT III:** 

Thursday, January 29, 1998

1:30 P.M.

DES Conference Room 220 N. LeRoux, Flagstaff

Patty Laux (520) 779-2731, ext. 233

DISTRICT IV:

Thursday, January 29, 1998

1:30 P.M.

Location:

Address: Coordin. Program Mgr. DES Conference Room 350 West 16th St., Yuma Tim Acuff (520) 782-4343

**CASA GRANDE** 

Date:

Time: Location:

Address: Coordin. Program Mgr.

**BISBEE** 

Date: Time: Location:

Address: Coordin. Program Mgr. DISTRICT V:

Thursday, January 29, 1998

1:30 P.M. DES Conference Room

2510 N. Trekell, Casa Grande Dan Van Keuren (520) 723-4151

DISTRICT VI:

Thursday, January 29, 1998

1:30 P.M.

DES Conference Room 209 Bisbee Road, Bisbee David Gibbs (520) 428-7702

Persons with a disability who wish to participate in an oral proceeding may request a reasonable accommodation, such as a sign language interpreter, by contacting the coordinating program manager named above. Requests should be made as early as possible to allow time to arrange the accommodation.

This document is available in alternative format by contacting Vista Thompson Brown at the address and number listed in question #3.

- Any other matters prescribed by statute that are applicable to the specific agency or any specific rule or class of rules: Not applicable.
- 10. Incorporations by reference and their location in the rules: Not applicable.
- 11. The full text of the rules follows:

### TITLE 6. ECONOMIC SECURITY

### CHAPTER 5. DEPARTMENT OF ECONOMIC SECURITY - SOCIAL SERVICES

R6-5-7505

### ARTICLE 50. CHILD CARE RESOURCE AND REFERRAL SYSTEM

R6-5-5010. Administrative Appeals Process

### ARTICLE 52. CERTIFICATION AND SUPERVISION OF FAMILY CHILD CARE HOME PROVIDERS

R6-5-5227. Appeals

### ARTICLE 58. FAMILY FOSTER PARENT LICENSING REQUIREMENTS

R6-5-5821. Appeals

### ARTICLE 59. GROUP FOSTER HOME LICENSING **STANDARDS**

R6-5-5907. Denial, Suspension or Revocation of a License

### ARTICLE 70. ADOPTION AGENCY LICENSING

R6-5-7039. Appeals

### ARTICLE 75. APPEAL AND HEARING PROCEDURES FOR ADVERSE ACTION AGAINST FAMILY FOSTER HOMES, ADOPTION AGENCIES, FAMILY CHILD CARE HOME PROVIDERS, AND PERSONS LISTED ON THE CHILD CARE RESOURCE AND REFERRAL SYSTEM

R6-5-7501. **Definitions** 

R6-5-7502.

R6-5-7503.

R6-5-7504.

Appealable Actions: Entitlement to a Hearing Computation of Time Request for Hearing: Form: Time Limits: Presumptions

10-J-7505.	Administration, Transmittal of Appear
R6-5-7506.	Stay of Adverse Action Pending Appeal
R6-5-7507.	Hearings: Location; Notice; Time
R6-5-7508.	Rescheduling the Hearing
R6-5-7509.	Hearing Officer: Duties: Qualifications
R6-5-7510.	Change of Hearing Officer; Challenges for Cause
R6-5-7511.	Subpoenas
R6-5-7512.	Parties' Rights
R6-5-7513.	Withdrawal of an Appeal
R6-5-7514.	Failure to Appear: Default: Reopening
R6-5-7515.	Hearing Proceedings
R6-5-7516.	Hearing Decision
R6-5-7517.	Effect of the Decision
R6-5-7518.	Further Administrative Appeal
R6-5-7519.	Appeals Board
R6-5-7520.	Judicial Review
ARTICLE 50	). CHILD CARE RESOURCE AND REFERRAL

### RTICLE 50. CHILD CARE RESOURCE AND REFERRAL SYSTEM

Administration: Transmittal of Anneal

### R6-5-5010. Administrative Appeals Process

- A. A provider may appeal the Department Administrative Review decision as prescribed in 6 A.A.C. 5 Article 75 A.A.C. R6-5-2401 et. seq., by filing a request for an appeal with the Department within 15 days after the mailing date of the Department's administrative review decision described in R6-5-5009(J).
- B. No change.
- C. No change.
- D. No change.

# ARTICLE 52. CERTIFICATION AND SUPERVISION OF FAMILY CHILD CARE HOME PROVIDERS

### R6-5-5227. Appeals

- A. No change.
- B. No change.
- C. The Department shall conduct All appeals shall be conducted as prescribed pursuant to the procedures set forth in 6 A.A.C. 5, Article 75 R6-5-2405.
- D. No change.

# ARTICLE 58. FAMILY FOSTER PARENT LICENSING REQUIREMENTS

### R6-5-5821. Appeals

- A. An applicant or licensee may appeal the denial, suspension, or revocation of a license as prescribed in 6 A.A.C. 5, Article 75 pursuant to the procedures prescribed in R6-5-2405(A) to (H). Imposition of a provisional license or a corrective action plan is not appealable.
- B. No change.
- C. No change.
- D. Appeals from the decision of a hearing officer are governed by A.R.S. §§ 41-1992(D) and 41-1993 and R6-5-7518 through R6-5-7520.

### ARTICLE 59. Group Foster Home Licensing Standards

# R6-5-5907. DENIAL, SUSPENSION OR REVOCATION OF A LICENSE

- A. No change.
- B. No change.
  - No change.
  - 2. No change.
  - When a hearing is requested, the denial, suspension or revocation of the license is not shall not become final until after the hearing officer issues a decision is published. (Refer to Title 6, Chapter 5, Article 24, Complaints and Appeals.)
  - 4. The Department shall conduct appeals as prescribed in 6 A.A.C. 5, Article 75.

### ARTICLE 70. ADOPTION AGENCY LICENSING

### R6-5-7039. Appeals

- A. No change.
- B. No change.
- C. The Department shall conduct appeals from an adverse action as prescribed in 6 A.A.C. 5, Article 75 pursuant to the procedures in R6-5-2405(A) to (II).
- D. The Department shall conduct appeals Appeals from the decision of a hearing officer as prescribed in shall be conducted pursuant to A.R.S. §§ 41-1992(D) and 41-1993 and R6-5-7518 through R6-5-7520.

# ARTICLE 75. APPEAL AND HEARING PROCEDURES FOR ADVERSE ACTION AGAINST FAMILY FOSTER HOMES, ADOPTION AGENCIES, AND CHILD CARE PROVIDERS

### R6-5-7501. Definitions

The following definitions apply in this Article.

- "Adverse action" means:
  - a. Denial suspension or revocation of a child care provider's certification, an adoption agency license, or a foster home license; and
  - b. Exclusion from the child care resource and referral system described in A.R.S. § 41-1967.

- "Administration" means the Department organizational unit responsible for taking adverse action which is the subject of an appeal. "Administration" includes the Division of Children. Youth, and Families and the Child Care Administration.
- 3. "Adoption agency" has the same meaning ascribed to "agency" in A.R.S. § 8-101(2).
- "Appeals Board" means the Department's independent, quasi-judicial, administrative appellate body, established pursuant to A.R.S. § 23-672, and authorized to review administrative decisions issued by hearing officers as prescribed in A.R.S. § 41-1992(D).
- "Appellant" means a person who seeks a hearing with the Office of Appeals to challenge adverse action taken by the Department.
- "Child Care Administration" means the administrative unit within the Department which is responsible for certification and supervision of family child care home providers and administration of the Child Care Resource and Referral System.
- "Child Care Resource and Referral System" means the child care provider information system which the Department administers under A.R.S. § 41-1967.
- 8. "Department" means the Arizona Department of Economic Security.
- "Division of Children, Youth, and Families" means the administrative unit in the Department responsible for licensing foster homes and adoption agencies.
- "Family child care home provider" has the same meaning as prescribed in R6-5-5201(29).
- 11. "Foster parent" has the same meaning as prescribed in A.R.S. § 8-501(5).
- 12. "Hearing officer" means an individual appointed by the Department Director pursuant to A.R.S. § 41-1992(A) to conduct hearings where an appellant is challenging adverse action.
- 13. "Licensee" means a person:
  - Applying for a license as, or currently licensed as, a foster parent or an adoption agency;
  - b. Applying for certification as, or certified as, a family child care home provider; or
  - <u>Listed on the Child Care Resource and Referral</u> System.
- 14. "Office of Appeals" means the Department's independent, quasi-judicial, administrative hearing body which includes hearing officers appointed pursuant to A.R.S. § 41-1992(A).
- "Person" means a natural person, partnership, joint venture, company, corporation, firm, association, society, or institution.

### R6-5-7502. Entitlement to a Hearing: Appealable Action

- A. A licensee who disputes an adverse action may obtain an administrative hearing to challenge the action as provided in this Article.
- B. The following actions are not appealable:
  - An adverse action resulting from a uniform change in federal or state law, unless the Department has misapplied the law to the person seeking the hearing;
  - Failure to clear a fingerprint check or criminal history check;
  - Imposition of noncompliance status as prescribed in R6-5-7035;
  - Imposition of a corrective action plan as prescribed in R6-5-5818;
  - 5. Removal of a child from a placement:

- Failure to enter into a contract with a particular licensee or to place a child with a particular licensee; and
- Imposition of a provisional license as prescribed in A.R.S. § 8-509(D).
- C. Findings made in a Child Protective Services ("CPS") investigation are not appealable under this Article. A person may appeal findings made in a CPS investigation of a licensee as prescribed in A.R.S. § 8-546.12.

### R6-5-7503. Computation of Time

- A. In computing any time period:
  - 1. The term "day" means a calendar day:
  - 2. The term "work day" means Monday through Friday, excluding Arizona state holidays;
  - The date of the act, event, notice, or default from which a designated time period begins to run, is not counted as part of the time period; and
  - The last day of the designated time period is counted, unless it is a Saturday, Sunday, or Arizona state holiday.
- B. A document mailed by the Department is deemed given to the addressee on the date mailed to the addressee's last known address. The mailing date is presumed to be the date shown on the document, unless the facts show otherwise.

# R6-5-7504. Request for Hearing: Form; Time Limits; Presumptions

- A. Except as otherwise provided in R6-5-5010(A) and R6-5-5227, a person who wishes to appeal an adverse action shall file a written request for hearing with the Administration within 20 days of the date of the notice or letter advising of the adverse action. The Administration shall make a written request form available for this purpose, and, upon request, shall help an appellant fill out the form.
- B. The appellant shall include the following information in the request for hearing:
  - Name, address, and telephone number, and, if applicable, telefacsimile number of the person who is the subject of the adverse action;
  - Identification of the Administration initiating the adverse action;
  - A description of the adverse action which is the subject of the appeal;
  - 4. The date of the notice of adverse action; and
  - A statement explaining why the adverse action is unauthorized, unlawful, or an abuse of discretion.
- C. The Department shall not deny an appeal solely because the request does not include all the information listed in subsection (B), so long as the request contains sufficient information for the Department to determine the identity of the appellant and the issue on appeal.
- D. A request for hearing is deemed filed:
  - On the mailing date, as shown by the postmark, if sent 1st class mail, postage prepaid, through the United States Postal Service to the Department; or
  - On the date actually received by the Department, if not mailed as provided in subsection (D)(1).
- E. The Department may determine that a document was timely filed if the sender of the document can demonstrate that the delay in submission was due to any of the following reasons:
  - Department error or misinformation;
  - Delay or other action by the United States Postal Service; or
  - Delay caused by the appellant changing mailing addresses at a time when the appellant had no duty to notify the Administration of the change.

- F. When a request for hearing is not timely filed, the Office of Appeals shall schedule a hearing to determine if the delay in submission is excused as provided in subsection (E).
- G. An appellant whose appeal is denied as untimely may petition for review as provided in R6-5-7518.

### R6-5-7505. Administration: Transmittal of Appeal

An Administration that receives a request for appeal shall send the Office of Appeals a copy of the request and the adverse action notice within 2 work days of receipt of the request.

### R6-5-7506. Stay of Adverse Action Pending Appeal

- A. The Department shall not carry out the adverse action until the time for appeal has run, except as otherwise provided in subsection (C), and in the following circumstances:
  - 1. The appellant expressly waives the delay of action; or
  - 2. The appellant.
    - Is subject to the same adverse action for reasons other than those which are the subject of the current adverse action notice; and
    - b. Received notice of and failed to timely appeal the adverse action being imposed for reasons other than those which are the subject of the current notice.
- B. If an appellant timely appeals an adverse action as provided in R6-5-7504, the Department shall not carry out the adverse action until a hearing officer issues a decision affirming the adverse action, except as otherwise provided in subsection (C), and in the following circumstances:
  - 1. The appellant expressly waives the delay of action:
  - The appellant.
    - a. Is subject to the same adverse action for reasons other than those which are the subject of the current adverse action notice; and
    - b. Received notice of and failed to timely appeal the adverse action being imposed for reasons other than those which are the subject of the current notice.
  - The appeal challenges action that is not appealable as described in R6-5-7502(B);
  - 4. The appellant withdraws the request for hearing; or
  - 5. The appellant fails to appear for the hearing.
- C. The Department may summarily suspend a license, a certificate, or registration on the CCR & R as provided in A.R.S. § 41-1064(C).

### R6-5-7507. Hearings: Location: Notice: Time

- A. The Office of Appeals shall schedule the hearing. The Office of Appeals may schedule a telephonic hearing, or permit a witness to appear telephonically.
- B. Unless the parties stipulate to another hearing date, the Office of Appeals shall schedule the hearing as follows:
  - For appeals of adverse action against a foster parent, within 10 days of the date the Department receives the appellant's request for hearing, as required by A.R.S. § 8-506; and
  - For all other appeals, no earlier than 20 days from the date the Department receives the appellant's request for hearing.
- C. The Office of Appeals shall mail a notice of hearing to all interested parties at least 20 days before the scheduled hearing date, except where the hearing is scheduled within the 10-day period specified in subsection (B)(1). For hearings scheduled within the 10-day period, the Office of Appeals shall notify the parties telephonically, and send written notice at the earliest date practicable.

- D. The notice of hearing shall be in writing and shall include the following information:
  - 1. The date, time, and place of the hearing:
  - 2. The name of the hearing officer;
  - 3. A general statement of the issues involved in the case;
  - 4. A statement listing the parties' rights, as specified in R6-5-7511; and
  - 5. A general statement of the hearing procedures.

### R6-5-7508. Rescheduling the Hearing

- A. An appellant may ask for postponement of a hearing by calling or writing the Office of Appeals and providing good cause as to why the hearing should be postponed. Good cause exists where circumstances beyond the appellant's reasonable control make it difficult or burdensome for the appellant to attend the hearing on the scheduled date.
- B. Except in emergency circumstances, the Office of Appeals must receive the request for postponement at least 5 work days before the scheduled hearing date, and may deny an untimely request. Emergency circumstances mean circumstances:
  - I. Beyond the reasonable control of the party:
  - 2. Which did not arise until after the 5-day period; and
  - Which could not reasonably have been anticipated or expected to arise.
- C. When the Office of Appeals reschedules a hearing pursuant to this section or R6-5-7514, the Office of Appeals shall notify all interested parties, in writing, prior to the hearing. The 20-day notice requirement in R6-5-7507(C) does not apply to rescheduled hearings.

### R6-5-7509. Hearing Officer: Duties and Qualifications

- A. An impartial hearing officer in the Office of Appeals shall conduct all hearings.
- B. The hearing officer shall:
  - Administer oaths and affirmations;
  - Regulate and conduct hearings in an orderly and dignified manner, which avoids unnecessary repetition and affords due process to all participants;
  - 3. Ensure that all relevant issues are considered:
  - 4. Exclude irrelevant evidence from the record;
  - Request, receive, and incorporate into the record, relevant evidence;
  - Upon compliance with the requirements of R6-5-7511, subpoena witnesses or documents needed for the hearing;
  - Open, conduct, and close the hearing;
  - Rule on the admissibility of evidence offered at the hearing;
  - 9. Direct the order of proof at the hearing:
  - 10. Upon the request of a party, or on the hearing officer's own motion, and for good cause shown, take action the hearing officer deems necessary to the proper disposition of an appeal, including the following:
    - a. Disqualify himself or herself from the case;
    - b. Continue the hearing to a future date or time;
    - Prior to the entry of a final decision, reopen the hearing to take additional evidence;
    - d. Deny or dismiss an appeal or request for hearing in accordance with the provisions of this article; and
    - Exclude non-party witnesses from the hearing room; and
  - 11. Issue a written decision deciding the appeal.

### R6-5-7510. Change of Hearing Officer; Challenges for Cause

- A. A party may request a change of hearing officer as prescribed in A.R.S. § 41-1992(B) by filing an affidavit which shall include:
  - 1. The case name and number,
  - The hearing officer assigned to the case, and
  - The name and signature of the party requesting the change.
- B. The party requesting the change shall file the affidavit with the Office of Appeals and send a copy to all other parties at least 5 days before the scheduled hearing date.
- C. Unless a party is challenging a hearing officer for cause as provided in subsection (D), a party may request only 1 change of hearing officer.
- D. At any time before a hearing officer renders a decision, a party may challenge a hearing officer on the grounds that the hearing officer is not impartial or disinterested in the case.
- E. A party who brings a challenge for cause shall file a request as provided in subsection (A) and send a copy of the request to all other parties. The request shall explain the reason why the assigned hearing officer is not impartial or disinterested.
- F. The hearing officer being challenged for cause may hear and decide the challenge unless:
  - A party specifically requests that another hearing officer make the determination; or
  - The assigned hearing officer disqualifies himself or herself from the decision.
- G. The Office of Appeals shall transfer the case to another hearing officer when:
  - 1. A party requests a change as provided in subsections (A) through (C); or
  - 2. A hearing officer is removed for cause as provided in subsections (D) through (F).
- H. The Office of Appeals shall send the parties written notice of the new hearing officer assignment.

### R6-5-7511. Subpoenas

- A. A party who wishes to have a witness testify at a hearing, or to offer a particular document or item in evidence, shall 1st attempt to obtain the witness or evidence by voluntary means. Department documents are available to the appellant as prescribed in R6-5-7512(2).
- B. If the party cannot procure the voluntary attendance of the witness or production of the evidence, the party may ask the hearing officer assigned to the case to issue a subpoena for a witness, document, or other physical evidence.
- C. The party seeking the subpoena shall send the hearing officer a written request for a subpoena. The request shall include:
  - 1. The case name and number;
  - 2. The name of the party requesting the subpoena:
  - The name and address of any person to be subpoenaed, with a description of the subject matter of the witness's anticipated testimony;
  - A description of any documents or physical evidence to be subpoenaed, including the title, appearance, and location of the item, and the name and address of the person in possession of the item; and
  - A description of the party's efforts to obtain the witness or evidence by voluntary means.
- D. A party who wants a subpoena shall ask for the subpoena at least 5 days before the scheduled hearing date.
- E. The hearing officer shall deny the request if the witness's testimony or the physical evidence is not relevant to an issue in the case or is cumulative.

F. The Office of Appeals shall prepare all subpoenas and serve them by certified mail, return receipt requested, except that the Office of Appeals may serve subpoenas to state employees who are appearing in the course of their state employment, by regular mail, hand-delivery, or state courier service.

### R6-5-7512. Parties' Rights

A party to a hearing has the following rights:

- The right to request a postponement of the hearing, as provided in this Article;
- The right to copy, at a reasonable time prior to the hearing, or during the hearing, any documents in the Department's file on the appellant, and documents the Department may use at the hearing, except documents shielded by the attorney-client or work-product privilege, or as otherwise prohibited by federal or state confidentiality laws;
- 3. The right to request a change of hearing officer as provided in A.R.S. § 41-1992(B) and R6-5-7510;
- 4. The right to request subpoenas for witnesses and evidence as provided in R6-5-7511;
- The right to present the case in person or through an authorized representative, subject to any limitations prescribed by 17(A) A.R.S. Rules of the Supreme Court. Rule 31(a);
- The right to present evidence and to cross-examine witnesses;
- The right to further appeal, as provided in R6-5-7518 and R6-5-7522, if dissatisfied with an Office of Appeals' decision.

### R6-5-7513. Withdrawal of an Appeal

- A. An appellant may withdraw an appeal at any time prior to the scheduled hearing by signing a written statement expressing the intent to withdraw. The Department shall make a withdrawal form available for this purpose. An appellant may also orally withdraw an appeal on the open record.
- B. Upon receipt of a withdrawal request signed by the appellant or the appellant's representative, or a statement of withdrawal made on the record, the Office of Appeals shall dismiss the appeal.

### R6-5-7514. Failure to Appear: Default; Reopening

- A. If an appellant fails to appear at the scheduled hearing, the hearing officer shall:
  - Enter a default and issue a decision dismissing the appeal, except as provided in subsection (B);
  - 2. Rule summarily on the available record; or
  - 3. Adjourn the hearing to a later date and time.
- B. The hearing officer shall not enter a default if the appellant notifies the Office of Appeals, before the scheduled time of hearing, that the appellant cannot attend the hearing, due to good cause, and still wishes the hearing or to have the matter considered on the available record.
- C. No later than 10 days after a scheduled hearing date at which a party failed to appear, the non-appearing party may file a request to reopen the proceedings. The request shall be in writing and shall demonstrate good cause for the party's failure to appear.
- D. The hearing officer may decide the issue of good cause on the available record, or may set the matter for briefing or for hearing.
- E. If the hearing officer finds that the party had good cause for non-appearance, the hearing officer shall reopen the proceedings and schedule a de novo hearing with notice to all interested parties as prescribed in R6-5-7508(C).

F. Good cause exists where the non-appearing party demonstrates excusable neglect for both the failure to appear and the failure to timely notify the hearing officer. "Excusable neglect" has the same meaning as prescribed in 16 A.R.S. Arizona Rules of Civil Procedure, Rule 60(c).

### R6-5-7515. Hearing Proceedings

- A. The hearing is a de novo proceeding. The Department has the initial burden of going forward with evidence to support the adverse action being appealed.
- B. To prevail, the appellant shall prove, by a preponderance of the evidence, that the Department's action was unauthorized, unlawful, or an abuse of discretion.
- C. The Arizona Rules of Evidence do not apply at the hearing.

  The hearing officer may admit and give probative effect to evidence as prescribed in A.R.S. § 23-674(C).
- D. The Office of Appeals shall tape record all hearings or record the hearing by other stenographic means. The Department need not transcribe the proceedings unless a transcription is required for further administrative or judicial proceedings.
- E. The Office of Appeals charges a fee of 15 cents per page for providing a transcript. A party may apply to the Office of Appeals for waiver of the fee upon a showing that the party cannot afford to pay for the transcript.
- F. A party may, at his or her own expense, arrange to have a court reporter present to transcribe the hearing.
- G. The hearing officer shall call the hearing to order and dispose of any prehearing motions or issues.
- H. With the consent of the hearing officer, the parties may stipulate to factual findings or legal conclusions.
- I. Upon request and with the consent of the hearing officer, a party may make opening and closing statements. The hearing officer shall consider any statements as argument and not evidence. Unless the hearing officer allows a longer period of time, a statement shall not exceed 3 minutes.
- J. A party may testify, present evidence, and cross-examine adverse witnesses. The hearing officer may also take witness testimony or admit documentary or physical evidence on his or her own motion.
- K. The hearing officer shall keep a complete record of all proceedings in connection with an appeal, and shall exclude any irrelevant evidence.
- L. The hearing officer may require the parties to submit memoranda on issues in the case if the hearing officer finds that the memoranda would assist the hearing officer in deciding the case. The hearing officer shall establish a briefing schedule for any required memoranda.

### R6-5-7516. Hearing Decision

- A. No later than 60 days after the date the appellant files a request for hearing with the Department, the hearing officer shall render a decision based solely on the evidence and testimony produced at the hearing, and the applicable law. The 60-day time limit is extended for any delay caused by the appellant.
- B. The hearing decision shall include:
  - 1. Findings of fact concerning the issue on appeal;
  - Citations to the law and authority applicable to the issue on appeal;
  - A statement of the conclusions derived from the controlling facts and law, and the reasons for the conclusions;
  - 4. The name of the hearing officer:
  - 5. The date of the decision; and
  - A statement of further appeal rights and the time period for exercising those rights.

C. The Office of Appeals shall mail a copy of the decision to each party's representative, or to the party if the party is unrepresented.

### R6-5-7517. Effect of the Decision.

- A. If the hearing officer affirms the adverse action against the appellant, the adverse action is effective on the mailing date of the hearing officer's decision. The adverse action remains effective until the appellant appeals and obtains a higher administrative or judicial decision reversing or vacating the hearing officer's decision.
- B. If the hearing officer reverses the Administration's decision to take adverse action, the Administration shall not take the action unless and until the Appeals Board or Arizona Court of Appeals issues a decision affirming the adverse action.

### R6-5-7518. Further Administrative Appeal

- A. A party may appeal an adverse decision issued by a hearing officer to the Department's Appeals Board, as prescribed in A.R.S. § 41-1992(C) and (D), by filing a written petition for review with the Office of Appeals within 15 days of the mailing date of the hearing officer's decision.
- B. The petition for review shall:
  - 1. Be in writing:
  - Describe why the party disagrees with the hearing officer's decision; and
  - Be signed and dated by the party or the party's representative.

- C. The party petitioning for review shall mail a copy of the petition to all other parties.
- D. The Office of Appeals shall have the proceedings transcribed.

### R6-5-7519. Appeals Board

- A. The Appeals Board shall conduct proceedings in accordance with A.R.S. § 41-1992(D) and A.R.S. § 23-672.
- B. Following notice to the parties, the Appeals Board may receive additional evidence or hold a hearing if the Appeals Board finds that additional information would help in deciding the appeal. The Board may also remand the case to the Office of Appeals for rehearing, specifying the nature of the additional evidence required, or any further issues to be considered.
- C. The Appeals Board shall decide the appeal based solely on the record of proceedings before the hearing officer, and any further evidence or testimony presented to the Board.
- D. The Appeals Board shall issue, and mail to all parties, a final written decision affirming, reversing, setting aside, or modifying the hearing officer's decision. The Board's decision shall specify the parties' rights to further review and the time for filing a request for review.

### R6-5-7520. Judicial Review

Any party adversely affected by an Appeals Board decision may seek judicial review as prescribed in A.R.S. § 41-1993.

### NOTICE OF PROPOSED RULEMAKING

### TITLE 9. HEALTH SERVICES

# CHAPTER 29. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS) QUALIFIED MEDICARE BENEFICIARY (QMB)

### **PREAMBLE**

1.	Sections Affected	Rulemaking Action
	R9-29-101	Amend
	R9-29-201	Amend
	R9-29-202	Repeal
	R9-29-202	New Section
	R9-29-203	Repeal
	R9-29-203	New Section
	R9-29-204	Repeal
	R9-29-301	Amend
	R9-29-302	Amend
	R9-29-401	Amend
	R9-29-402	Repeal
	R9-29-403	Repeal
	R9-29-404	Repeal
	R9-29-501	Amend
	R9-29-502	Amend
	R9-29-503	Amend
	R9-29-504	Repeal
	R9-29-601	Amend
	R9-29-602	Amend

2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statute the rules are implementing (specific):

Authorizing statute: A.R.S. §§ 36-2903.01(H), 36-2932(P), and 36-2972(B)

Implementing statute: A.R.S. §§ 36-2903.03, 36-2904(H), 36-2907, 36-2931, 36-2939, 36-2971, 36-2972, 36-2973, 36-2974, and 36-2975

### Arizona Administrative Register

### Notices of Proposed Rulemaking

The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name:

Cheri Tomlinson

Address:

Arizona Health Care Cost Containment System

801 East Jefferson, MD4200 Phoenix, Arizona 85034

Telephone:

(602) 417-4198

Fax:

(602) 256-6756

An explanation of the rule, including the agency's reasons for initiating the rule:

Changes are proposed to the 6 Articles in 9 A.A.C. 29, Qualified Medicare Beneficiary (QMB) as a result of the recommendations in the previous 5-year review report. The changes are also designed to provide additional clarity, conciseness, and understandability to the Chapter. This Chapter provides guidelines and requirements for the Administration, contractors, and providers to utilize in the coordination and delivery of services to QMB eligible individuals.

A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable.

### The preliminary summary of the economic, small business, and consumer impact:

The economic impact is nominal because the changes are designed to:

- Implement recommendations from the previous 5-year review report;
- Update citations to federal and state law and regulation;
- Align and cross-reference with AHCCCS acute care rules, whenever appropriate and possible;
- · Clarify that as a result of recent changes regarding prior period coverage, the Administration or a Medicare risk contractor is responsible for recoupment of claims as specified in contract;
- Clarify and modify language to conform to actual agency practice; and
- Simplify language to make the rules more user friendly.

The primary beneficiaries of the improvements made to the Article include:

- The AHCCCS Administration;
- AHCCCS contractors, including AHCCCS health plans and ALTCS program contractors;
- The AHCCCS TPL contractor;
- AHCCCS and ALTCS providers; and
- AHCCCS and ALTCS members.

### The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact:

Name:

Cheri Tomlinson

Address:

Arizona Health Care Cost Containment System

801 East Jefferson, MD4200 Phoenix, Arizona 85034

Telephone:

(602) 417-4198

Fax:

(602) 256-6756

### The time, place, and nature of the proceedings for the adoption, amendment or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule: Date:

January 21, 1998

Time:

9 a.m.

Location:

AHCCCS Administration

701 East Jefferson, 2nd Floor, Hearing Room A

Phoenix, Arizona 85034

Nature:

Public Hearing

A person may submit written comments on the proposed rules. The written comments should be submitted no later than 5 p.m., January 23, 1998, to the person listed in question #7.

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- 9. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

  Not applicable.
- 10. Incorporation by reference and their location in the rules:

  None.
- 11. The full text of the rules as follows:

### TITLE 9. HEALTH SERVICES

# CHAPTER 29. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS) QUALIFIED MEDICARE BENEFICIARY (OMB)

### **ARTICLE 1. DEFINITIONS**

### Section

R9-29-101. Definitions

### ARTICLE 2. ELIGIBILITY AND ENROLLMENT

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R9-29-201.	General provisions Provisions of OMB Eligibility
R9-29-202.	Conditions of QMB eligibility QMB Enrollment
R9-29-203.	QMB enrollment QMB Dual and Only Discontinu-
	anaa

R9-29-204. QMB-discontinuance and discorrollment Reserved

### ARTICLE 3. COVERED BENEFITS AND SERVICES

### Section

R9-29-301.	Qualified	Medicare	Beneficiary	only Only
***	~	* * **	~ ~ .	

R9-29-302. Qualified Medicare Beneficiary with dual-eligibility Dual Eligibility

# ARTICLE 4. HEALTH PLAN, PROVIDER AND PROGRAM CONTRACTOR REQUIREMENTS CONTRACTOR, PROVIDER, NONPROVIDER, AND NONCONTRACTING PROVIDER REQUIREMENTS

#### Section

R9-29-401.	Health plans and other providers Contractor, Pro-	
	vider, Nonprovider, and Noncontracting Provider	
	Requirements	

R9-29-402. Program contractors and other providers Reserved R9-29-403. Nonproviders and noncontracting providers

R9-29-404. Reserved Physician services Reserved

### ARTICLE 5. GRIEVANCE AND APPEAL PROCESS

R9-29-501.	Eligibility appeals and hearing requests for appli-
	eants or recipients of QMB services General Provi-
	sions for all Grievance and Appeals

R9-29-502. Member grievances Eligibility Appeals and Hearing Requests for Applicants or Recipients of QMB Services

R9-29-503. Nonmember-grievances Grievances

R9-29-504. Program contractor, health plan, provider, noncontracting provider, nonprovider and TPA grievances
Reserved

# ARTICLE 6. THIRD-PARTY 1ST- AND 3RD-PARTY LIABILITY

### Section

Contion	
R9-29-601.	Third party liability and coordination of benefits
10,20.	time party meeting and coordination of ochetits
	1st- and 3rd-narty Liability

R9-29-602. Third-party liability monitoring and compliance

1st- and 3rd-Party Liability Monitoring and Compliance

### ARTICLE 1. DEFINITIONS

### R9-29-101. Definitions

The following words and phrases, in addition to definitions contained in A.R.S. § 36-2971, have the following meanings unless the context of the Chapter explicitly requires another meaning:

- 1, "1st-party liability" has the meaning in 9 A.A.C. 22, Article 1.
- 2. "3rd party" has the meaning in 9 A.A.C. 22, Article 1.
- "3rd-party liability" has the meaning in 9 A.A.C. 22. Article 1.
- 1-4. "AHCCCS" means the Arizona Health Care Cost Containment System as authorized by A.R.S. § 36-2901 et seq. has the meaning in 9 A.A.C. 22, Article 1.
- 2-5. "ALTCS" means the Arizona Long Term Care System as authorized by A.R.S. § 36-2931 et seq.
- 3-6. "CFR" means the Code of Federal Regulations, October 1, 1988, edition, unless otherwise specified in this Chapter
- 7. "Contractor" has the meaning in 9 A.A.C. 22, Article 1.
- 8. "Dual eligible" has the meaning in A.R.S. § 36-2971.
- 4.9. "Enrollment" means the process by which a person who has been determined eligible becomes a member with an AHCCCS health plan or an ALTCS program contractor has the meaning in 9 A.A.C. 22, Article 1.
- 5. "Federal poverty guidelines" means the federal statistieal poverty thresholds published annually by the United States Department of Health and Human Services.
- 6: "Health plan" means an organization or entity participating in AHCCCS on a prepaid capitation basis that contracts with the Administration to provide AHCCCS covered services. In AHCCCS contracts for the provision of state-assisted care, health plans are referred to as "contractors."
- 7. "Institutionalized individual" means an individual who is in a medical institution or nursing facility and receiving an appropriate level of care at a nursing facility (NF) or intermediate care facility—mentally retarded (ICF-MR) or who receives, or will receive, home and community based services (HCBS).
- 8. "MCCA" means the Medicare Catastrophic Coverage Act of 1988, Public Law 100-360, July 1, 1988, as amended by the Family Support Act of 1988, Public Law 100-485, October 13, 1988, and the Technical and Miscellaneous Revenue Act of 1988, Public Law 100-647, November 10, 1988.
- 9.10 "Program contractor" means a county or group of counties, the Arizona Department of Economic Security or any other person that contracts with the Administration to provide ALTCS covered services, has the meaning in A.R.S. § 36-2971.
- 10.11."QMB" "QMB only" means Qualified Medicare Beneficiary only and is defined in A.R.S. § 36-2971.

11. "Third-Party Administrator or TPA" means an organization or entity that contracts with the Administration to coordinate the payment of deductibles and coinsurance amounts for QMB eligible persons not otherwise AHC-CCS eligible to obtain coverage or secure benefits authorized by A.R.S. Title 36, Chapter 29, Article 3.

### ARTICLE 2. ELIGIBILITY AND ENROLLMENT

### R9-29-201. General provisions Provisions of OMB Eligibility

- A. Applications shall be processed and eligibility determined by the The Administration shall process applications and determine eligibility in accordance with 42 U.S.C. 1396d(P), August 5, 1997, and 42 CFR 435, Subpart J. J., and Section 1905(p) of the Social Security Act, November 10, 1988, incorporated by reference herein and on file with the Office of the Secretary of State.
- B. Individuals who meet the requirements set forth in this Section and R9-29-202-shall be determined eligible to receive QMB benefits.
- B. Eligibility for QMB benefits become effective the 1st day of the month following the month in which an eligibility decision is made.
- C. In accordance with A.R.S. § 36-2903.03., an individual shall be a U.S. citizen or have qualified alien status to be eligible for OMB benefits.
- D. All OMB members shall be residents of Arizona in accordance with 42 CFR 435.403.

### R9-29-202. Conditions of QMB eligibility Repealed

- A. U.S. citizenship or legal alienage shall be a condition of eligibility for QMB benefits in accordance with 42 CFR 435.402, incorporated by reference herein and on file with the Office of the Secretary of State.
- B. All QMB members shall be residents of Arizona in accordance with 42 CFR 435.403, incorporated by reference herein and on file with the Office of the Secretary of State.
- Institutionalized individuals who, for the purpose of being determined eligible for QMB, transferred assets for less than the fair market value shall be subject to disqualification from eligibility as follows:
  - 1. The disqualification period for transfers occurring prior to July 1, 1988, shall be calculated in accordance with Section 1917(c)(1) of the Social Security Act, December 22, 1987, incorporated by reference herein and on file with the Office of the Secretary of State.
  - 2. The disqualification period for non-interspousal transfers occurring on or after July 1, 1988, and interspousal transfers occurring on or after October 1, 1989, shall be calculated in accordance with Section 1917(e)(1) of the Social Security Act, as amended by Sections 303(b) and (c) of the MCCA, incorporated by reference herein and on file with the Office of the Secretary of State.
  - The disqualification period for interspousal transfers occurring prior to October 1, 1989, shall be calculated in accordance with paragraph (1).

### R9-29-202. OMB Enrollment

Dual eligibles shall be enrolled or remain enrolled with the health plan, program contractor, or fee-for-service network in accordance with the provisions specified in 9 A.A.C. 22 and 9 A.A.C. 28.

### R9-29-203. QMB enrollment Repealed

Dual eligibles shall be enrolled or remain enrolled with the health plan, program-contractor or fee for service network as appropriate.

### R9-29-203. OMB Dual and Only Discontinuance

- A. The Administration shall provide notice of discontinuance in accordance with 42 CFR 431.210, 431.211, 431.213, and 435.919 to members who become ineligible for QMB benefits.
- B. The Administration shall discontinue immediately and without notice members who lose QMB eligibility due to death, discontinuance shall be effective the day after the date of death.
- C. A member will lose QMB eligibility due to incarceration and shall be discontinued the date the Administration is notified.

# R9-29-204. QMB discontinuance and discorollment Repealed

- A: Members who become ineligible for QMB benefits shall receive notice of discontinuance in accordance with Section 2 of the Computer Matching and Privacy Protection Act of 1988, Public Law 100-503, October 18, 1988, or 42 CFR 431-210, 431-211, 431-213, and 435-919, incorporated by reference herein and on file with the Office of the Secretary of State.
- B. Members who lose QMB eligibility due to death shall be discontinued immediately; discontinuance shall be effective the day after the date of death.
- C. Members who lose eligibility for QMB due to any other reason-shall be discontinued from QMB after appropriate discontinuance notice has been given pursuant to subsection (A).

#### ARTICLE 3. COVERED BENEFITS AND SERVICES

### R9-29-301. Qualified Medicare Beneficiary only

- A. A person determined eligible as a QMB only shall be entitled to may receive the following benefits and services:
  - Payment of Medicare Part A premiums, coinsurance, and deductibles.
  - Payment of Medicare Part B premiums, coinsurance, and deductibles, and
  - Medicare-covered services defined in 42 CFR 409 and 410, 410, incorporated by reference herein and on file with the Office of the Secretary of State.
- B. A person determined eligible as a QMB only who receives covered services from a provider that does not accept Medicare assignment shall be is entitled to coverage of the coinsurance and deductible up to and not exceeding the Medicare-approved amount. The AHCCCS Administration shall make Payment payment of the coinsurance and deductible shall be made for a QMB-only member only to the provider, and under Under no circumstances shall the AHCCCS Administration make such a coinsurance or deductible payment to a QMB-only member. If there is The QMB-only member is responsible for any balance due to the provider after reimbursement of the applicable coinsurance and deductible by the AHCCCS Administration. then payment of that amount is the responsibility of the member, the The AHCCCS Administration shall have no liability for any balance.

# R9-29-302. Qualified Medicare Beneficiary with dual-eligibility Dual Eligibility

- A. A person determined dual eligible shall be entitled to may receive the following benefits and services:
  - 1. The benefits and services described in R9-29-301.
  - Medical services and provisions specified in A.A.C.
     Title 9, Chapter 22, Article 2, 9 A.A.C. 22, Article 2, subject to the limitations and exclusions specified limitations and exclusions therein or services and provisions

- specified in A.A.C. Title 9, Chapter 28, Article 2, R9-28-Article 2, subject to the limitations and exclusions specified therein; limitations and exclusions.
- B. The AHCCCS Administration may deny Payment payment for covered benefits and services may be denied when: if:
  - The Services services are not obtained within the member's health plan or program contractor or fee-for-service network-network; and, or both
  - The Services services are not provided in conformance with the provisions in 9 A.A.C. 22 or 9 A.A.C. 28.
- C. A person determined dual eligible who receives covered services from a provider within the health plan, program contractor, or fee-for-service network, and which services were authorized by the health plan, program contractor or the AHCCCS Administration Office of the Medical Director, shall have no liability for any coinsurance or deductibles associated with those services.

# ARTICLE 4. HEALTH PLAN, PROVIDER AND PROGRAM CONTRACTOR REQUIREMENTS CONTRACTOR, PROVIDER, NONPROVIDER, AND NONCONTRACTING PROVIDER REQUIREMENTS

# R9-29-401. Health plans and other providers Contractor, Provider, Nonprovider, and Noncontracting Provider Requirements

- A. Health plans Contractors and other providers shall be responsible for providing the covered services specified in R9-29-302 to dual eligible and enrolled OMB-only members in accordance with the provisions as specified in 9 A.A.C. 22.
- B. Program contractors and other providers shall be responsible for providing the covered services specified in R9-29-302 to dual eligible and OMB-only members as specified in 9 A.A.C. 28.
- C. Nonproviders and noncontracting providers shall submit all claims for services rendered, including claims for copayments, as specified in A.R.S. § 36-2904(H).
- D. The Administration or a Medicare risk contractor shall be responsible for recoupment of claims as specified in contract.

# R9-29-402. Program contractors and other providers Repealed

Program contractors and other providers shall be responsible for providing the covered services specified in R9-29-302 to dual eligible and enrolled members in accordance with the provisions specified in A.A.C. Title 9, Chapter 28.

### R9-29-403. Nonproviders and noncontracting providers Repealed

Nonproviders and noncontracting providers shall submit clean claims as defined by A.R.S. § 36-2904(H) for the co-insurance and deductibles to the AHCCCS Administration, the Third-Party Administrator or other designated representative. Payment shall be limited to the lesser of the Medicare maximum allowable amount or the AHCCCS capped fee for service rate for such services.

### R9-29-404. Physician services Repealed

Primary care physicians (PCPS) who are obstetricians or gynecologists shall only be PCPs for pregnant females.

### ARTICLE 5. GRIEVANCE AND APPEAL PROCESS

R9-29-501. Eligibility appeals and hearing requests for applicants or recipients of QMB services General Provisions for all Grievances and Appeals

All grievances and appeals regarding QMB shall be filed and processed as specified in A.A.C. R9-22-801.

- A. Individuals affected by adverse eligibility actions may appeal and request a hearing concerning any of the following adverse eligibility actions:
  - 1. Denial of eligibility;
  - Discontinuance of eligibility;
  - 3. Delay in the eligibility determination.
- B. Notice of an adverse eligibility action shall be personally delivered or mailed to the affected individual by regular mail. For purposes of this Section, the date of the Notice of Action shall be the date of personal delivery to the individual or the date of mailing.
- C. Eligibility appeals and hearing request process.
  - 1. The applicant, eligible person or an authorized representative may appeal and request a hearing from any adverse eligibility action by completing and submitting the AHCCCS Request for Hearing form or by submitting a written request as described in paragraph (3) not later than 35 days after the date of the notice of an adverse action.
  - 2: The Request for Hearing form or the written request shall be submitted to the Office of the Grievance and Appeals, AHCCCS Administration. If the Request for Hearing is submitted by mail, the date of request shall be the postmarked date. If the Request for Hearing is submitted in person, the date of request shall be the date on which the request is submitted to the Office of the Grievance and Appeals.
  - 3. If the appellant or authorized representative does not utilize the Request for Hearing form, he shall provide the following information on a written hearing request:
    - a. The case name; and
    - b. Adverse eligibility decision being appealed; and
    - e. Reason for appeal; and
    - d. Request for continuance of QMB services, if applicable:
  - 4. If requested, the eligibility office shall assist the appellant or authorized representative in the completion of the Request for Hearing form or the written request.
  - 5: The eligibility office shall send to the AHCCCS Office of the Grievance and Appeals the Pre-Hearing Summary and documents pertinent to the denial or discontinuance action within five days after the date of the receipt of the request for such materials by the Office of the Grievance and Appeals.
  - 6. The Pre-Hearing Summary shall be completed by the eligibility office and shall summarize the facts and factual basis for the adverse eligibility action.
- D. Withdrawal and denial of the hearing request.
  - 1: The AHCCCS Hearing Officer shall dismiss a Request for Hearing and close the appeal if a written request for withdrawal is received from the appellant prior to the scheduled date of the hearing.
  - 2. The AHCCCS Hearing Officer shall deny an appeal and Request for Hearing if:
    - a: The date of request is subsequent to the timeframes specified in subsection (C);
    - b. The appeal and Request for Hearing is for a reason(s) other than those identified in subsection (A);
    - c. The appellant's appeal rights have been waived.

### E. Postponement.

1. The Hearing Officer on his own motion may postpone a hearing. When the request for postponement is made by a party, it shall be made in writing and received by the AHCCCS Office of the Grievance and Appeals no later

- than five days prior to the scheduled hearing date. The AHCCCS Hearing Officer shall grant a party's request for postponement on a showing that there is substantial cause for the postponement and the cause is beyond the reasonable control of the party.
- 2. If a postponement is granted by the AHCCCS Hearing Officer, the hearing shall be rescheduled at the earliest practicable date.
- F. Notice of Hearing. The Notice of Hearing shall be in accordance with A.R.S. § 41-1061 and shall include a statement detailing how an appellant may require a postponement of the hearing.
- G: Failure to appear for hearing. Should the appellant, his representative, or AHCCCS eligibility representative fail to appear at the hearing without good cause or a postponement, the AHCCCS Hearing Officer may:
  - 1. proceed with the hearing,
  - 2. reschedule the hearing with further notice on his own motion;
  - 3. issue a decision based on the evidence of record, or
  - 4. issue a default disposition.
- H. Eligibility and benefits during the appeal process.
  - Individuals appealing a discontinuance. A discontinuance is a termination of eligibility and benefits. Individuals requesting a hearing within the time frame specified in subsection (C) shall continue to be eligible and receive benefits until an adverse decision on appeal is rendered.
  - 2. Individuals appealing a denial of eligibility.
    - A denial is an adverse eligibility decision which finds the applicant ineligible as a Qualified Medicare Beneficiary.
    - b. The effective date of a denial is the date of notice of an adverse action. Individuals may appeal this denial within the time frame specified in subsection (C). In the event that the denial is overturned, the effective date of eligibility shall be established by the Director in accordance with applicable law.
- Appellant's hearing rights.
  - Each appellant shall be afforded those hearing rights specified in A.R.S. §§ 41-1061 and 41-1062.
  - 2: Each appellant has the right to obtain copies of any relevant documents from the case record at the appellant's expense.
  - Each appellant has the right to appear at the hearing and be heard in person, by telephone if available, through a representative designated in writing by the appellant, or to submit to the Office of the Grievance and Appeals a written statement that is signed and notarized prior to the hearing.
  - 4. Each appellant has the right to bring an interpreter to assist at the hearing.
  - Persons who are deaf or mute according to A.R.S. § 12-242 shall be provided an interpreter by the Administration.
- J. Conduct of hearing. The hearing shall be conducted pursuant to A.R.S. §§ 41-1061 and 41-1062.
- K. AHCCCS Hearing Officer decision.
  - 1. Except as provided in paragraph (2), after the conclusion of the hearing, the AHCCCS Hearing Officer shall prepare written findings of fact and conclusions of law and render a recommended decision to the Director.
  - Under the following circumstances the AHCCS Hearing Officer shall issue a final disposition in a case without a hearing by:

- a: Default order when the appellant or eligibility representative fails to appear at the hearing without good cause; or;
- Disposition order when the appellant withdraws his appeal or there is a stipulated agreement to the disposition; or,
- e: Dismissal order when the appeal was not timely

### L. Decision of the Director.

- 1. After receipt of the Hearing Officer's recommended decision, the Director shall issue his decision in writing, which shall include findings of fact and conclusions of law and, unless otherwise provided by law, personally deliver or mail by certified mail a copy thereof to all parties at their last known residence or place of business. If a discontinuance or denial is upheld, the decision also shall state that the appellant may reapply for eligibility. The decision shall notify any party adversely affected of the right to request rehearing or review.
- As part of his decision, the Director may remand the case for eligibility decision.
- 3. Except as provided in subsection (M), the Director's decision made pursuant to this subsection shall be a final administrative decision. Such a decision is not subject to judicial review unless the 'Director makes the finding provided for in subsection (M).

### M. Request for Rehearing or Review.

- 1. Unless the Director incorporates a finding in his decision that good cause exists otherwise, an aggrieved party may petition the Director for rehearing or review of the decision for any of the following causes which materially affects the appellant's rights:
  - a. Irregularity in the proceedings of the hearing or appeal whereby the aggrieved party was deprived of a fair hearing or appeal;
  - b. Misconduct of a party or the agency;
  - e: Newly discovered material evidence, which with reasonable diligence could not have been discovered and produced at the hearing:
  - d: That the decision is the result of passion or prejudice; or
  - e. That the decision is not justified by the evidence or is contrary to law:
- 2. The Director may remand the case for eligibility decision, open the decision, order the taking of additional testimony or evidence before the Hearing Officer, amend findings of fact and conclusions of law or make new findings and conclusions, and render a new decision.
- 3. The petition for review or rehearing shall be in writing and shall specify the grounds upon which the petition is based. The Director shall review the sufficiency of the evidence if the petition is made upon the ground that the decision is not justified by the evidence.
- 4. A petition for rehearing or review shall be filed not later than 15 days after the date of the Director's decision. The date of the Director's decision shall be the date of personal delivery to the aggrieved party or the date of mailing. In the event that a timely petition for rehearing or review is filed, the Director's decision shall not be considered a final administrative decision until the Director renders a finial decision on the petition for rehearing. The final decision of the Director after consideration of a petition for rehearing or review shall be subject to review as provided by A.R.S. § 12 901 et seq.

N. Failure to submit a grievance or appeal in a timely manner shall constitute a failure to exhaust administrative remedies required as a condition to seeking judicial relief.

# R9-29-502. Member grievances Eligibility Appeals And Hearing Requests for Applicants or Recipients of OMB Services

- A. A member aggrieved by any adverse decision or action by a program contractor, health plan, subcontractor, noncontracting provider, nonprovider, Third Party Administrator or the Administration may file a grievance and request a hearing as specified in this Section.
- B. Member grievances to program contractor.
  - All grievances filed by members relating to the program contractor, subcontractor, health plan, TPA, noncontracting provider, or nonprovider shall be filed with the member's program contractor, health plan or TPA for review, investigation and resolution in accordance with the grievance requirements of this Subsection and the applicable contract.
  - 2. All grievances shall be filed orally or in writing with the member's program contractor, health plan or TPA not later than 35 days after the date of such adverse decision or action.
  - 3. The program contractor, health plan or TPA shall record and retain sufficient information to identify the grievant, date of receipt and nature of the grievance.
  - 4. A final decision shall be rendered by the program contractor, health plan or TPA on grievances that involve issues related to continuity or delivery of medical services within 15 days of filing. A final decision shall be rendered by the program contractor, health plan or TPA on all other grievances within 30 days of filing. A copy of the decision by the program contractor, health plan or TPA shall be personally delivered or mailed by regular mail to all parties and shall state the basis for the decision as well as information regarding the individual's right to appeal the decision to the Administration.
  - 5. At the time of enrollment, each member shall be given material explaining grievance procedures available through the program contractor, health plan or TPA and through the Administration.
  - 6. This Section shall not apply to actions or decisions affecting a member's eligibility; or to actions or decisions that reduce a categorically eligible member's benefits as a result of changes in state or federal law.

### C. Member's grievance or appeal to Administration.

- 4. Members may appeal to and request a hearing from the AHCCCS Office of the Grievance and Appeals if:
  - a. The member files a written notice of appeal not more than 15 days after the date of the final decision of the program contractor, health plan or TPA. The date of the final decision shall be the date of personal delivery to the member or the date of mailing.
  - b. In the event that a decision was not timely rendered by the program contractor, health plan or TPA in accordance with the provisions of this Section, the member files a written notice of appeal not more than 60 days after the date the grievance was filed with the program contractor, health plan or TPA, based upon the program contractor's, health plan's or TPA's failure or refusal to timely decide the grievance.
  - The member has a grievance against the Administration and files the grievance not more than 35

- days after the date of adverse decision or action by the Administration.
- Grievances filed pursuant to this subsection shall be in writing and state with particularity the factual and legal basis therefor and the relief requested.
- 3. If the Office of the Grievance and Appeals is unable to resolve the appeal to the appellant's satisfaction, a hearing shall be scheduled.

### D. AHCCCS Hearing Officer decision

- The Notice of Hearing shall be in accordance with A.R.S. § 41-1061.
- 2. The hearing shall be conducted before an AHCCCS Hearing Officer designated by the Director and held in accordance with A.R.S. §§ 41-1061 and 41-1062.
- After the conclusion of the hearing, the AHCCCS Hearing Officer shall prepare written findings of fact and conclusions of law and render a recommended decision to the Director.

### E. Decision of the Director.

- 1. After receipt of the Hearing Officer's recommended decision, the Director shall issue his decision in writing, which shall include findings of fact and conclusions of law, and unless otherwise provided by law, personally deliver or mail by certified mail a copy thereof to all parties at their last known residence or place of business. The decision shall notify any party adversely affected of the right to request rehearing or review.
- 2. Except as provided in subsection (F), the Director's decision made pursuant to this subsection shall be a final administrative decision. Such a decision is not subject to judicial review unless the Director makes the finding provided for in subsection (F).

### F. Request for Rehearing or Review.

- I. Unless the Director incorporates a finding in his decision that good cause exists otherwise, an aggrieved party may petition the Director for rehearing or review of the decision for any of the following causes which materially affects the appellant's rights:
  - Irregularity in the proceedings of the hearing or appeal whereby the aggricved party was deprived of a fair hearing or appeal;
  - b. Misconduct of a party or the agency;
  - e. Newly discovered material evidence, which with reasonable diligence could not have been discovered and produced at the hearing;
  - d. That the decision is the result of passion or prejudice; or
  - e. That the decision is not justified by the evidence or is contrary to law.
- The Director may open the decision, order the taking of additional testimony or evidence before the Hearing Officer, amend findings of fact and conclusions of law or make new findings and conclusions, and render a new decision.
- 3. The petition for review or rehearing shall be in writing and shall specify the grounds upon which the petition is based. The Director shall review the sufficiency of the evidence if the petition is made upon the ground that the decision is not justified by the evidence.
- 4. A petition for rehearing or review shall be filed not later than 15 days after the date of the Director's decision. The date of the Director's decision shall be the date of personal delivery to the member or the date of mailing. In the event that a timely petition for rehearing or review is filed, the Director's decision shall not be considered a

final administrative decision until the Director renders a final decision on the petition for rehearing. The final decision of the Director after consideration of a petition for rehearing or review shall be subject to review as provided by A.R.S. § 12-901 et seq.

- G: Failure to submit a grievance and appeal in a timely manner shall constitute a failure to exhaust administrative remedies required as a condition to seeking a judicial relief.
- A. An individual affected by an adverse eligibility action may appeal and request a hearing concerning any of the following adverse eligibility actions:
  - Denial of eligibility.
  - Discontinuance of eligibility, or
  - 3. Delay in the eligibility determination.
- B. Notice of an adverse eligibility action shall be personally delivered or mailed to the affected individual by regular mail. For purposes of this Section, the date of the Notice of Action shall be the date of personal delivery to the individual or the postmark date, if mailed.
- C. Appeals and requests for hearing.
  - An applicant, eligible person or authorized representative may appeal and request a hearing from any adverse eligibility action by completing and submitting, no later than 35 days after the date of the Notice of Action, the AHCCCS hearing form or a written request that contains the following information:
    - a. The case name:
    - b. The adverse eligibility action being appealed; and
    - c. The reason for appeal.
  - 2. The request for hearing shall be submitted to the Office of Grievance and Appeals, AHCCCS Administration. If the request for hearing is submitted by mail, the date of request shall be the postmark date. If the request for hearing is submitted in person, the date of the request shall be the date on which the request is submitted to the Office of Grievance and Appeals.
- D. Eligibility office responsibilities.
  - If requested, the eligibility office shall assist the appellant or authorized representative to complete the request for hearing.
  - The eligibility office shall send to the AHCCCS Office of Grievance and Appeals the Pre-Hearing Summary and documents pertinent to the denial or discontinuance action within 5 days after the date of the receipt of the request for materials by the Office of Grievance and Appeals.
  - 3. The eligibility office shall complete the Pre-Hearing Summary and include a summary of the factual basis for the adverse eligibility action.
- E. Eligibility and benefits during the appeal process.
  - Individuals appealing a discontinuance. A discontinuance is a termination of eligibility and benefits. An individual requesting a hearing within the time-frame specified in subsection (C) shall continue to be eligible and receive benefits until an adverse decision on appeal is rendered.
  - Individuals appealing a denial of eligibility.
    - A denial is an adverse eligibility decision that finds an applicant ineligible as a Qualified Medicare Beneficiary.
    - b. The effective date of a denial is the date of notice of an adverse action. An individual may appeal this denial within the time-frame specified in subsection (C). If the denial is overturned, the effective

date of eligibility shall be established by the Director in accordance with applicable law.

### R9-29-503. Nonmember-grievances-Grievances

- An eligible but nonenrolled individual may request a hearing by filing a written grievance with the AHCCCS Office of the Grievance and Appeals.
- B: The written grievance shall be filed with and received by the Administration not later than 35 days after the date of adverse decision or action being grieved.
- C. If the Office of the Grievance and Appeals is unable to resolve the grievance to the grievant's satisfaction, a hearing shall be conducted and decision rendered, in accordance with the applicable provisions of R9-29-502.
- D: Grievances that involve issues related to continuity or delivery of medical services shall be resolved as expeditiously as practicable considering the medical needs presented by the grievant.
- E. Pailure to submit a grievance and appeal in a timely manner shall constitute a failure to exhaust administrative remedies required as a condition to seeking judicial relief.
- F. This Section shall not apply to actions or decisions affecting an individual's eligibility or to actions or decisions that reduce a categorically eligible individual's benefits as a result of changes in state or federal law.

All grievances regarding QMB shall be filed and processed as specified in A.A.C. R9-22-804.

### R9-29-504. Program contractor, health plan, provider, noncontracting provider, nonprovider and TPA grievances Repealed

- A: The provisions of this Section provide the exclusive manner through which program contractors, health plan, TPA, providers, noncontracting providers, and nonproviders may grieve against the Administration, its officers and employees, program contractors, health plans and TPA in connection with any adverse action or decision.
- B. Grievances against program contractor, health plan and TPA.
  - 1. All grievances by providers, noncontracting providers and nonproviders relating to an adverse decision or action by a program contractor, health plan or TPA shall be filed with the program contractor, health plan or TPA for review, investigation and resolution in accordance with the grievance requirements of this subsection and any applicable contract.
  - All grievances, excluding those challenging claim denials, shall be filed in writing with the program contractor, health plan or TPA not later than 35 days after the date of such adverse decision or action. All grievances challenging claim denials shall be filed in writing with the program contractor, health plan or TPA not later than 12 months from the date of the service for which payment is claimed. The grievance shall state with particularity the factual and legal basis therefor, and the relief requested.
  - 3. The program contractor, health plan or TPA shall record and retain information to identify the grievant, date of receipt and nature of the grievance.
  - 4. A final decision shall be rendered by the program contractor, health plan or TPA within 30 days of filing, unless the parties agree to a longer period of time. A copy of the decision of the program contractor, health plan or TPA shall be personally delivered or mailed by regular or certified mail to all parties and shall state the basis for the decision.
- C. Grievances to the Administration.

- Program contractors, health plans, TPA, providers, noncontracting-providers and nonproviders may grieve to the Office of the Grievance and Appeals of the Administration if:
  - a. The provider, noncontracting provider or nonprovider files a grievance with the Administration not more than 15 days after the final decision of the program contractor, health plan or TPA rendered pursuant to subsection (B). The date of the final decision shall be the date of personal delivery or the date of mailing.
  - b. In the event that a decision was not timely rendered by the program contractor, health plan or TPA in accordance with subsection (B), and the provider, noncontracting provider or nonprovider files a grievance more than 60 days after the date the grievance was filed with the program contractor, health plan or TPA. Such a grievance may be filed because the program contractor, health plan or TPA failed or refused to timely decide the grievance. The program contractor, health plan or TPA shall reimburse all administrative costs incurred by the Administration for adjudicating any such grievance.
  - e. The program contractor, health plan, TPA, provider, noncontracting provider or nonprovider has a grievance against the Administration and files the grievance not more than 35 days after the date of adverse action, decision or policy implementation by the Administration; provided, however, any grievances challenging claim denials by the Administration must be filed not more than 12 months after the date of the service for which payment is claimed.
- Grievances filed pursuant to this subsection shall be in writing and state with particularity the factual and legal basis therefor and the relief requested.
- 3. The Administration shall investigate the grievance and render a written decision regarding the grievance or schedule the grievance for a hearing in accordance with the provisions of this Section.
- D. Appeals. A party may appeal the Administration's grievance decision by filing a request for hearing with the Director. The request for hearing shall be filed and received by the Director not later than 15 days after the date of the Administration's grievance decision. The date of the grievance decision shall be the date of personal delivery to the grievant or the date of mailing.
  - The Notice of Hearing shall be in accordance with A.R.S. § 41-1061.
  - The hearing shall be conducted before an AHCCCS
    Hearing Officer designated by the Director and held in
    accordance with A.R.S. §§ 41-1061 and 41-1062.
  - After the conclusion of the hearing, the AHCCCS Hearing Officer shall prepare written findings of fact and conclusions of law and render a recommended decision to the Director.

#### E. Decision of the Director.

1. After receipt of the Hearing Officer's recommended decision, the Director shall issue his decision in writing, which shall include findings of fact and conclusions of law and, unless otherwise provided by law, personally deliver or mail by certified mail a copy thereof to all parties at their last known residence or place of busi-

- ness. The decision shall notify any party adversely affected of the right to request rehearing or review.
- 2. Except as provided in subsection (F), the Director's decision made pursuant to this subsection shall be a final administrative decision. Such a decision is not subject to judicial review unless the Director makes the finding provided for in subsection (F).

### F. Request for Rehearing or Review.

- 1. Unless the Director incorporates a finding in his decision that good cause exists otherwise, an aggrieved party may petition the Director for rehearing or review of the decision for any of the following causes which materially affects the grievant's rights:
  - a. Irregularity in the proceedings of the hearing or appeal whereby the aggrieved party was deprived of a fair hearing or appeal;
  - b. Misconduct of a party or the agency;
  - e. Newly discovered material evidence which with reasonable diligence could not have been discovered and produced at the hearing;
  - d. That the decision is the result of passion or prejudice: or
  - : That the decision is not justified by the evidence or is contrary to law.
- The Director may open the decision, order the taking of additional testimony or evidence before the Hearing Officer, amend findings of fact and conclusions of law or make new findings and conclusions, and render a new decision.
- 3. The petition for review or rehearing shall be in writing and shall specify the grounds upon which the petition is based. The Director shall review the sufficiency of the evidence if the petition is made upon the ground that the decision is not justified by the evidence.
- 4. A petition for rehearing or review shall be filed not later than 15 days after the date of the Director's decision. The date of the Director's decision shall be the date of personal delivery to the grievant or the date of mailing. In the event that a timely petition for rehearing or review is filed, the Director's decision shall not be considered a final administrative decision until the Director renders a final decision on the petition for rehearing. The final decision of the Director after consideration of a petition for rehearing or review shall be subject to review as provided by A.R.S. § 12-901 et seq.
- G: Pending final resolution of a grievance, appeal, or request for judicial review, a grieving program contractor, health plan or Third-Party Administrator shall proceed diligently with the performance of the contract and in accordance with the Administration's or Director's decision.
- H. Failure to comply with the provisions of this Section shall constitute a failure to exhaust administrative remedies required as a condition to seeking judicial relief.

# ARTICLE 6. THIRD-PARTY 1ST- AND 3RD-PARTY LIABILITY

# R9-29-601. Third party liability and coordination of benefits-1st- and 3rd-Party Liability

A. Payor of last resort. AHCCCS shall be used as a source of payment for covered services only after all other sources of payment for members and eligible persons receiving care have been used. AHCCCS shall be the payor of last resort unless prohibited by federal law. AHCCCS shall not be liable

for coinsurance or deductibles when Medicare denies payment. The provisions specified in A.A.C. R9-22-1001 apply to this Section.

- B: Collections:
  - 4: The Administration shall coordinate and pursue collection from underinsured and uninsured motorist insurers, third-party liability insurers and tort-feasors in eases of probable third-party liability.
  - Providers, health plans, program contractors, nonproviders and noncontracting providers are responsible for:
    - a. Identifying and pursuing collection of reimbursement from probable sources of third-party liability set forth in R9-29-602(A)(1) through (7).
- B. The Administration shall not be liable for payment of coinsurance and deductibles when Medicare denies payment.
  - Identifying and notifying the Administration in accordance with R9-29-602(D) of the potential liability of underinsured and uninsured motorist insurers, third-party liability insurers and tort-feasors.
  - e- Cooperating with the Administration in its collection efforts.
- C. Duplication of benefits. Payments made for covered services by AHCCCS shall not duplicate benefits otherwise available from probable third-party payors. Payments by AHCCCS for covered services may supplement payment or benefits from third-parties to the extent authorized by this Chapter or applicable contracts.
- D. Recovery. A health plan or program contractor may retain not more than 100% of its third party collections provided that:
  - Total payments received do not exceed the total amount of the health plan's or program contractor's financial liability for the member;
  - AHCCCS fee for service, deferred liability and reinsurance benefits have not duplicated the recovery:
  - Such recovery is not prohibited by federal or state law;
  - 4: The payments collected are reflected in capitation rates. The Administration may require a health plan or program contractor to reimburse the Administration not more than 100% of third party payments collected which are not reflected in reduced capitation rates.
- E. Recovery; Administration. The Administration may retain its third-party collections up to 100% of capitation, fee for service, deferred liability and reinsurance payments.

# R9-29-602. Third-party liability monitoring and compliance1st- and 3rd-Party Liability, Monitoring, and Compliance

- A. Categories of third party liability. The Administration shall monitor third-party payments to a health plan, program contractor, noncontracting provider, provider or nonprovider, which may include all situations creating liability in a third person for care rendered to a QMB recipient, such as:
  - 1. Workers' compensation;
  - 2. Disability insurance;
  - 3. A hospital and medical service corporation;
  - A health care services organization or other health or medical or insurance plan;
  - 5. Standard health-insurance;
  - 6. Medicare and other governmental payors;
  - 7. Medical payments insurance for accidents; and
  - Underinsured or uninsured motorist insurance, thirdparty-liability insurance or tort-feasors.

- B. Monitoring. The Administration shall determine whether a health plan, program contractor, provider, nonprovider or noncontracting provider is in compliance with the requirements set forth in this Article by inspecting source documents for:
  - 1. Verifiability and reliability:
  - 2. Appropriateness of recovery attempt;
  - 3. Timeliness of billing;
  - 4. Accounting for reimbursements;
  - 5. Auditing of receipts; and
  - Other monitoring deemed necessary by the Administration.
- C. Notification for perfection, recording and assignment of AHCCCS liens.
  - 1. County requirements. The county of residence shall notify the Administration pursuant to subsection (E) not later than five days after it files a lien pursuant to A.R.S. § 11-291 for charges for hospital or medical services provided to an injured person who is determined AHC-CCS eligible, so that the Administration may preserve its lien rights pursuant to A.R.S. § 36-2915, 36-2935, or 36-2956.
  - 2: Hospital requirements. Hospitals providing emergency or urgent medical services to an eligible non-enrolled person or member for an injury or condition resulting from circumstances reflecting the probable liability of a third-party shall notify the Administration pursuant to subsection (E) not later than 15 days after discharge. A hospital also may satisfy the requirement of this paragraph by mailing to the Administration a copy of the lien it proposes to record or has recorded pursuant to A.R.S. § 33-932 not later than 15 days after discharge.
  - 3. Health plan, program contractor, provider, nonprovider and noncontracting provider requirements. Health plans, program contractors, providers, nonproviders and noncontracting providers, other than hospitals rendering medical services to an eligible non-enrolled person or member for an injury or condition resulting from eircumstances reflecting the probable liability of a third party, shall notify the Administration pursuant to subsection (E) not later than five days after providing such services.
- Notice requirements. Notice requirements shall be satisfied when all of the following information is mailed to the Administration:
  - 1. Name of provider, health plan, program contractor, nonprovider or noncontracting provider;
  - 2. Address of provider, health plan, program contractor, nonprovider or noncontracting provider;
  - Name of patient;
  - Patient's Social Security number or AHCCCS identification number;
  - Address of patient;
  - 6. Date of patient's admission;
  - 7. Amount due for care of patient;
  - 8. Date of patient's discharge;
  - 9. Name of county in which injuries were sustained; and
  - 10. Names and addresses of all persons, firms or corporations and their insurance carriers claimed by the patient or the patient's legal representative to be liable for damness.
- Sanctions. Health plans, program contractors, providers, non-providers or noncontracting providers who fail to meet the notice requirements set forth in this Section shall forfeit their right to reimbursement, including fee for service, deferred

liability and reinsurance payments, from the Administration for services provided to eligible non-enrolled persons or members, unless the health plan, program contractor, provider, nonprovider or noncontracting provider demonstrates

good cause for such failure. Good cause means a cause that was not within their control.

The provisions in A.A.C. R9-22-1002 apply to this Section.

### NOTICE OF PROPOSED RULEMAKING

#### TITLE 18. ENVIRONMENTAL QUALITY

### CHAPTER 15. WATER INFRASTRUCTURE FINANCE AUTHORITY OF ARIZONA

### **PREAMBLE**

1.	Sections Affected	Rulemaking Action
	R18-15-101	Amend
	R18-15-107	Amend
	R18-15-108	Amend
	R18-15-110	New Section
	R18-15-111	Amend
	R18-15-112	Amend
	R18-15-113	Amend
	R18-15-203	New Section
	R18-15-204	Amend
	R18-15-206	Amend
	R18-15-207	Amend
	R18-15-304	Amend
	R18-15-305	Amend
	R18-15-306	Amend
	R18-15-307	Amend
	R18-15-403	Amend

2. The specific authority for the rulemaking, including both the authorizing statutes (general) and the statutes the rules are implementing (specific):

Authorizing & Implementing statutes: A.R.S. §§ 49-371(B)(7), 49-374, 49-374.01, 49-376

3. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Primary Name: Lynn A. Keeling on behalf of the Board of Directors of the Water Infrastructure Finance Authority of Ari-

zona

Address: Arizona Department of Environmental Quality

3033 North Central Avenue Phoenix, Arizona 85012

Telephone: (602) 207-2223, (800) 234-5677 ext. 2223 (Arizona only)

Fax: (602) 207-2251 TTD Number: (602) 207-4829

Secondary Name: Greg Swartz

Address: Water Infrastructure Finance Authority

3033 North Central Avenue Phoenix, Arizona 85012

Telephone: (602) 207-4707, (800) 234-5677 ext. 4707 (Arizona only)

Fax: (602) 207-4888 TTD: (602) 207-4829

### 4. An explanation of the rule, including the agency's reasons for initiating the rule:

During the 43rd Legislative Session, House Bill 2304, Laws 1997, Ch. 130, was passed. The governor signed this bill into law on April 22, 1997. The law became effective April 22, 1997, due to an emergency enactment. This legislation renamed the Wastewater Management Authority of Arizona to the Water Infrastructure Finance Authority of Arizona (WIFA). Prior to this legislation, WMA operated as a financing organization for wastewater treatment systems and nonpoint source projects. The new Authority now finances public drinking water facilities as well as wastewater facilities.

A rulemaking was completed in September of 1997 which created the new Chapter 15 in Title 18 of the *Arizona Administrative Code*. This Chapter contains the same criteria for the clean water revolving fund as was previously found in the WMA fund priority classes (18 A.A.C. 10, Wastewater Management Authority of Arizona). Due to the creation of the new drinking water revolving fund, Chapter 15 contains the funding priority classes for drinking water facilities (as defined in R18-15-101).

For FY 1998, WIFA created an intended use plan and project priority list for the clean water revolving fund and the drinking water revolving fund. Applications for funding were mailed out in the 2nd quarter of 1997 to all known wastewater treatment facilities, potential nonpoint source projects, and drinking water facilities. On September 10, 1997, a draft Intended Use Plan was mailed to Arizona cities, towns, Indian tribes, sanitation districts, drinking water facilities, and interested parties for their review and comment. This draft included the anticipated fundable range from the FY 1998 Project Priority List. The draft priority list was prepared based upon specific requests received from Arizona communities.

The classing, scoring, and ranking for the drinking water revolving fund priority list resulted in approximately 94 facilities having the same class with many having the same score. The difficulty with this clustering was that it became very difficult to prioritize a facility when 5 other facilities had the same scoring. This clustering meant that the rule needed to be amended to distinguish the classification and scoring for more distinction between facilities.

The WIFA discussed the clustering problem with ADEQ and others who participated in preparing the draft intended use plan. As a result of the discussions, the following amendments are contained in this rulemaking.

Within the drinking water revolving fund, Class A for continuing projects now has a qualifier to ensure that high priority multiyear projects are the only projects that may qualify for Class A on subsequent funding years. For a project to qualify as a Class A project, WIFA now requires a project a multi-year funding commitment to have been only in Class A, B or C in the prior year, and the project must have received at least 20 points for prior year funding. This is to avoid the possible problem of a multi-year funding commitment automatically qualifying for Class A in subsequent years.

Within the drinking water revolving fund, Class C was reduced to only include drinking water facilities that have violations in the water system physical plant. WIFA believes that this type of violation should have priority over projects that are not a result of violations, as well as projects that consolidate or regionalize or do not fall within any classification established to date. The reason for this priority is that most modifications that are not required as a result of a violation are planned modifications as opposed to a modification due to a violation. It is generally presumed that a modification required because of a violation is more likely to impact the public's health, than a planned modification which is not as a result of a violation. The fund is intended to be used 1st for projects that impact human health before it is to be used on projects that are planning ahead to prevent problems, since there are so many facilities with substantial needs.

Within the drinking water revolving fund, Class D was amended to include what used to be part of Class C, that is, projects that rehabilitate existing delivery capability or existing facility design or upgrades that are not a result of violations. This is intended to distinguish facilities that are out of compliance and presumptively a health problem from others that are not presumptively a health problem. WIFA understands that regardless of violations, there may still be a health problem in both cases. However, if there is a health problem that is documentable, then it is anticipated that the facility should be in either Class A or Class B.

The previous drinking water revolving fund Class D was for consolidation or regionalization of services, and it is now designated as Class E due to the separation of Class C into Classes C and D. As a result, the previously designated Class E is now Class F. No other new classes have been added.

To further distinguish the ranking criteria for drinking water facilities within a class, the "condition of the facilities and sources" has been removed and replaced with the following 4 criteria:

- 1. Acquiring, Rehabilitating or Developing Sources (ARD);
- 2. Treatment Upgrade or Treatment Expansion (TUE);
- 3. Distribution System (DS); and
- 4. Storage Facility (SF).

Rather than assigning 125 points to condition of facility and source 50 points are now assigned to AR, 30 points to TUE, DS, and SF. Therefore, it is possible a maximum of 140 may be awarded, however it is highly unlikely that a system will need to do all the possible upgrades or modifications listed above.

The drinking water revolving fund point assignment for Acquiring, Rehabilitating or Developing Sources (ARD) is broken into 2 primary categories:

- 1. Up to 20 points for a new source capacity. If the new source is a renewable source, the full 20 points are assigned. Only 10 points are awarded for a nonrenewable source. This is intended to provide an incentive for facilities to seek out renewable sources.
- 2. In addition to the points awarded for the type of the new source, if the drinking water facility is underserved by its current source, then 30 points may be awarded for correcting contaminated or depleted water. It may be corrected by acquiring, rehabilitating or developing a new source. Expansion of the service area because of contaminated or insufficient water is assigned 15 points. A new source for future growth is assigned 5 points.

### Arizona Administrative Register

### Notices of Proposed Rulemaking

The primary change from the previous point assignments is that the condition of the facility is not used to determine the points, it is believed this is better described by the type of change employed to correct the problem (contaminated or depleted water source). The point assignment for the new source capacity remains the same, however it is 1 of 2 solutions that may be applied to a problem. A facility may obtain a new renewable water source while also rehabilitating a water source to serve a current service area. This section no longer focuses on the upgrade or rehabilitation capacity or a component of the system on a general level. The new point assignment identifies developing new sources and what service the new source will meet (current, expanded, or future growth).

Treatment upgrade and treatment expansion for drinking water facilities replaces the general criteria of upgrade or rehabilitate existing, required disinfection equipment. This criteria breaks down the points into 1 of 2 methods, that is, upgrade surface water or upgrade ground water. Each type of upgrade may be assigned 30 points maximum and 10 points minimum, therefore no priority is given to treatment of surface water over ground water. There can be 30 points assigned for treatment of surface water micro-organisms, or 30 points assigned for treatment of ground water with chlorination, or 20 points assigned for treatment of chemical constituents that are harmful if people are exposed to them, or 10 points assigned for treatment of chemical constituents that are not harmful if people are exposed to them.

The drinking water revolving fund Distribution System now has 30 points assigned. This was an element of the condition of facilities and sources, but it is now listed as a separate priority class to distinguish the need of a distribution system versus a a new source or treatment. There are 4 possible solutions a distribution system may employ as shown below:

- 1. Rehabilitation, replacement or repair of existing lines with either inadequate line size or inadequate pressure. (Inadequate line size or pressure poses the most problems to a system that will affect the public's health);
- 2. Rehabilitation, replacement or repair of existing lines. (This type will include all other causes for this solution);
- 3. Installation of new lines. (This is presumed to cure a need for water that cannot be presently met); and
- 4. Rehabilitation, replacement, or repair a hydropneumatic tank.

The rule then assigns points ranging from 5 points to 30 points, for the method used to achieve the solutions listed above.

The drinking water revolving fund Storage Facility now has 30 points assigned. WIFA gave 30 points for no storage due to the importance of this ability, 25 points for storage which needs rehabilitation to cure inadequate storage or inadequate pressure, or 25 points for expansion of storage. Rehabilitating or expanding storage may be assigned 5 points for servicing future growth (the lowest priority), to 10 points for current growth, 15 or 20 points for servicing an expanded area, 20 or 25 points for servicing an existing area, and 25 points for inadequate design of the storage facility (not applicable to the expanded storage).

To ensure there are no more tie scores, WIFA added section K to the priority list ranking criteria for drinking water facilities. This section states that tied scores shall be ranked by placing the lowest cost effectiveness ratio project above all other tied projects in the class. The cost effectiveness ratio means the project dollars per benefitting connection.

WIFA found that the project construction did not need to be linked to ADEQ's on-site inspections. Therefore the project construction section was amended to state that the construction funding shall be withheld until ADEQ issues an approval to construct to the applicant. This is a more responsible distribution of funding. This change was also applied to the clean water revolving fund and all other financial assistance.

Definitions were added for clarity, and some grammatical changes were also made. The entire rule text is included in this rule-making to facilitate reader understanding.

# 5. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable.

### 6. A summary of the economic, small business and consumer impact:

This rulemaking is to clarify the point assignment for generating the project priority list. This rulemaking is to ensure the projects with the highest need are properly ranked for receiving funding. This rulemaking will not create new jobs. The only cost to WIFA is the extra labor it took to resolve the problem that arose during the 1st point assignment in creating the project priority list. This rulemaking will not impact the amount of money WIFA receives from the federal government. The only anticipated change is clarification of need by applicants wishing to receive funding from the drinking water revolving fund.

# 7. Name and address of person who can be contacted regarding questions about the economic, small business and consumer impact statement:

Name:

Greg Swartz

Address:

Water Infrastructure Finance Authority

3033 North Central Avenue Phoenix, Arizona 85012

Telephone:

(602) 207-4707, (800) 234-5677 ext. 4707 (Arizona only)

Fax:

(602) 207-4888

TTD:

(602) 207-4829

### 8. Time, place, and nature of proceedings for this rulemaking:

Oral proceedings are scheduled as follows:

Sierra Vista

Wednesday, January 21, 1998, at 1 pm

Sierra Vista Police Department

911 North Coronado Drive

Sierra Vista, Arizona 85635

Contact: Greg Swartz at (602) 207-4707

If you need special assistance, please contact LeeAnn at (520) 458-3311.

Tucson

Thursday, January 22, 1998, (following the RIC meeting) at 1 p.m.

Pima Association of Governments

PAG Conference Room (4th floor)

177 North Church Avenue, Suite 408

Tucson, Arizona 85701

Contact: Greg Swartz at (602) 207-4707

If you need special assistance, please contact Karen Bazinet at (520) 792-1093.

Phoenix

Wednesday, January 28, 1998, at 11:30 a.m. (following the Senate Committee Hearing)

Arizona Department of Environmental Quality

Public Meeting Room

3033 North Central

Phoenix, Arizona 85012

Contact: Greg Swartz at (602) 207-4707

If you need special assistance, please contact Michael Scholnick at (602) 207-4795.

Pinetop-Lakeside

Thursday, January 29, 1998, at noon

Pinetop-Lakeside Sanitary District

Conference Room

2600 West Alisa Lane

Pinetop-Lakeside, Arizona

Contact: Greg Swartz at (602) 207-4707

If you need special assistance, please contact John or Annette at (520) 368-5370.

Kingman

Wednesday, February 4, 1998, 1 p.m.

County Board of Supervisors

Conference Room

809 East Beale

Kingman, Arizona

Contact: Greg Swartz at (602) 207-4707

If you need special assistance, please contact Barbara at (520) 753-0729

Flagstaff

Thursday, February 5, 1998, 10 a.m.

Flagstaff City Officers

City Council Chambers

211 West Aspen

Flagstaff, Arizona 86001

Contact: Greg Swartz at (602) 207-4707

If you need special assistance, please contact Chris at (520) 779-7660.

Phoenix

Friday, February 6, 1998, at 10 a.m.

Arizona Department of Environmental Quality

Public Meeting Room

3033 North Central

Phoenix, Arizona 85012

Contact: Greg Swartz at (602) 207-4707

If you need special assistance, please contact Michael Scholnick at (602) 207-4795.

All comments must be received by close of comment on Friday, February 6, 1998, at 5 p.m.

### 9. Any other matters prescribed by statute that are applicable to your agency or to the specific set of rules:

All comments must be received by close of comment on Friday, February 6, 1998, at 5 p.m.

### 10. Material that is incorporated by reference:

None.

### 11. Full text of the rules:

### TITLE 18. ENVIRONMENTAL QUALITY

### CHAPTER 15. WATER INFRASTRUCTURE FINANCE AUTHORITY OF ARIZONA

### ARTICLE 1: MANAGEMENT

R18-15-101.	Definitions
R18-15-107.	Environmental Review
R18-15-108.	Readiness to Proceed
R18-15-111.	Disbursements and Repayments
R18-15-112.	Administration
R18-15-113	Disnutes

### ARTICLE 2. CLEAN WATER REVOLVING FUND

R18-15-204.	Clean Water Revolving Fund Priority List
R18-15-206.	Clean Water Revolving Fund Priority List Ranking
R18-15-207.	Criteria Project Construction

### ARTICLE 3. DRINKING WATER REVOLVING FUND

R18-15-304.	Drinking	Water R	evolving Fu	nd Pric	rity List	
R18-15-305.	Drinking Water Revolving Fund Priority Classes					
R18-15-306.			Revolving			
	Ranking Criteria					

R18-15-307. Project Construction

### ARTICLE 4. OTHER FINANCIAL ASSISTANCE

R18-15-403. Project Construction

### **ARTICLE 1: MANAGEMENT**

### R18-15-101. Definitions

In addition to the definitions prescribed in A.R.S. §§ 49-101, 49-201, and 49-371, the terms of this Article, unless otherwise specified, have the following meanings:

- "Acutely toxic" means the ability of a substance to cause poisonous effects resulting in severe biological harm or death after a single exposure or dose.
- "Applicant" means a governmental unit or a drinking water facility that is seeking financial assistance from the authority pursuant to the provisions of this Chapter.
- 3. "Application" means a request for financial assistance submitted to the Board, by an applicant.
- 4. "Approval to Construct" means the written approval issued by the Department to an applicant or recipient indicating that project construction may begin.
- 5. "Authority" means the Water Infrastructure Finance Authority of Arizona pursuant to A.R.S. § 49-371.
- 6. "Board" means the board of directors of the authority pursuant to A.R.S. § 49-371.
- "Certified Water Quality Management Plan" means a plan prepared by the designated Water Quality Management Planning Agency, pursuant to section 208 of the Clean Water Act (33 U.S.C. 1288) and certified by the Governor.
- "Clean Water Revolving Fund" means the fund established by A.R.S. § 49-374.
- "Collector" means a network of pipes or sewers used to collect and transport wastewater to a treatment plant or disposal system.
- "Construction" means, for a project, any placement, assembly, or installation of a building, structure, equipment, treatment process, collection lines, distribution

- lines, pumps, or related drinking water or water pollution control activity.
- "Dedicated Source of Repayment" means the source of revenue authorized by the voters, petitioners or the Arizona Corporation Commission to be used to repay the financial assistance.
- "Department" means the Arizona Department of Environmental Quality.
- "Design life" means the period during which a treatment works or drinking water facility is planned and designed to be operated.
- 14. "Designated Water Quality Management Planning Agency" means a single representative organization designated by the Governor pursuant to section 208 of the Clean Water Act (33 U.S.C. 1288) to develop a Certified Water Quality Management Plan for the area.
- "Disbursement" means the transfer of cash from the fund to a recipient.
- "Drinking Water Facility" means a community water system as defined in R18-4-101, or a nonprofit noncommunity water system as defined in R18-4-101.
- 17. "Drinking Water Revolving Fund" means the fund established by A.R.S. § 49-374.01.
- "EPA" means the United States Environmental Protection Agency and its successor.
- 19. "Equivalency Project" means a wastewater treatment facility under section 212 of the Clean Water Act (33 U.S.C. 1292) constructed in whole or in part before October 1, 1994, with funds equaling the amount of the federal capitalization grant.
- "Executive Director" means the executive director of the Water Infrastructure Finance Authority of Arizona.
- 21. "Federal capitalization grant" means the assistance agreement by which the EPA obligates and awards funds allotted to the Authority for purposes of capitalizing the Clean Water Revolving Fund and the Drinking Water Revolving Fund.
- "Financial assistance" means the use of monies for any of the purposes identified in R18-15-201, R18-15-301, and R18-15-401.
- "Financial assistance agreement" means any agreement, including a loan repayment agreement, that defines the terms for financial assistance given pursuant to this Article.
- 24. "First Use Project" means a project identified by EPA and the state as part of the National Municipal Policy List for the state.
- "Governmental unit" means a political subdivision or Indian tribe that may receive financial assistance from the Authority pursuant to A.R.S. § 49-373.
- 26. "Infiltration" means water other than wastewater that enters a sewer system, including sewer service connections and foundation drains, from the ground through such means as defective pipes, pipe joints, connections, or manholes.
- 27. "Intended Use Plan" means the document prepared by the Authority identifying the intended uses of Clean Water Revolving Fund and Drinking Water Revolving

- Fund capitalization grants pursuant to R18-15-203 and R18-15-303.
- 28. "Interceptor" means a sewer which is designed for 1 or more of the following purposes:
  - a. To intercept wastewater from a final point in a collector and convey such wastes directly to a treatment facility or another interceptor.
  - b. To replace an existing wastewater treatment facility and transport the wastes to an adjoining collector or interceptor for conveyance to a treatment plant.
  - c. To transport wastewater from 1 or more municipal collectors to another municipality or to a regional plant for treatment.
  - d. To intercept an existing major discharge of raw or inadequately treated wastewater for transport directly to another interceptor or to a treatment plant.
- 29. "MBE, WBE, SBRA Reporting" means identifying and documenting Minority Owned Businesses, Women Owned Businesses, and Small Business Enterprise in a Rural Area that participate in a contract funded in whole or in part by WIFA.
- 2930. "Nonpoint Source Program" means Arizona's Non-point Source Program, approved by EPA under section 319 of the Clean Water Act (33 U.S.C. 1329) for controlling pollution from nonpoint sources.
- 3031. "Preconstruction" means any activity that occurs on the project before any physical activity on-site such as the erection, acquisition, alteration, remodeling, improvement, or extension of treatment works, collection lines, distribution lines, or pumps.
- 3132. "Priority List" means the ranking of projects developed by the Board pursuant to R18-15-204 and R18-15-304.
- 3233. "Project" means any distinguishable segment or segments of a wastewater treatment facility, drinking water facility or the Nonpoint Source Program which can be bid separately and for which financial assistance is being requested or provided.
- 3334. "Project completion" means the date, as determined by the Authority, after consultation with the Department and the applicant or recipient, that operation of the project is initiated or is capable of being initiated, whichever occurs 1st.
- 3435. "Recipient" means an applicant who has entered into a financial assistance agreement with the Authority.
- 3536. "Replacement" means obtaining and installing equipment or accessories which are necessary during the design and operation of the drinking water and wastewater infrastructure to maintain the capacity and performance for which such infrastructure were designed and constructed.
- 3637. "Regulatory authority" means the Department, EPA, the Department of Health Services, a county, city, or other local health department, a county environmental agency, or a sanitary district.
- 3738. "State match" means the monies that may be used to meet the requirements of section 602(b)(2) of the Clean Water Act (33 U.S.C. 1382) and section 1452(e) of the Safe Drinking Water Act (42 U.S.C. 300j-12).
- 3839. "Treatment works" means any devices and systems for the storage, treatment, recycling, and reclamation of municipal sewage, domestic sewage, or liquid industrial wastes used to implement section 201 of the Clean

- Water Act (33 U.S.C. 1281) or necessary to recycle or reuse water over the design life of the works.
- 3940. "User charge" means a charge levied on users of drinking water and wastewater infrastructure.

#### R18-15-107. Environmental Review

- A. The Authority shall conduct an environmental review pursuant to this Section for impacts of the design or construction of water infrastructure works in accordance with applicable federal and state law. As part of the application process, the Authority shall request information from the applicant to conduct an environmental review consistent with the Clean Water Act (33 U.S.C. 1251 through 1387) and A.R.S. Title 49.
- B. If, based on the application and other information submitted by the applicant, the Authority determines that a categorical exemption from an environmental review is warranted, the project is exempt from the requirements of this Section. The Authority shall grant an exemption if existing information and documents demonstrate that the project qualifies under 1 or more of the following categories:
  - Any project which is directed towards rehabilitation of existing facilities, functional replacement of equipment, or the construction of new ancillary facilities adjacent or appurtenant to existing facilities which do not affect the degree of treatment or capacity of the existing facility.
  - Any project in sewered communities which is for minor upgrading and minor expansion of existing treatment works.
  - Any project in unsewered communities where on-site technologies are proposed.
- C. The Authority shall deny an exemption if the project falls under any of the following categories:
  - 1. The project will create a new, or relocate an existing, discharge to surface or ground waters.
  - The project will result in substantial increases in the volume of discharge or the loading of pollutants from an existing source or from new facilities to receiving waters.
  - The project is known or expected to have a significant effect on the quality of the human environment, either individually, cumulatively over time, or in conjunction with other federal, state, local, or private actions.
  - 4. The project is known or expected to directly or indirectly affect cultural resources, habitats of endangered or threatened species, environmentally important natural resource areas such as floodplains, wetlands, important farmlands, and aquifer recharge zones; or other resource areas.
  - The project is known or expected to cause significant public controversy.
  - The project is known or expected not to be cost effective.
- D. If the Authority determines that a categorical exemption is not warranted under subsection (B) of this Section, the applicant shall prepare an Environmental Information Document (EID) in a format prescribed by the Authority. The EID shall be of sufficient scope to allow development of an Environmental Assessment (EA) under subsection (E) of this Section.
- E. The EA may be conducted by the Authority or by the applicant under the supervision of the Authority and shall include consideration of all of the following factors:
  - For the delineated planning area, the existing environmental conditions relevant either to the analysis of alter-

- natives or to determining the environmental impacts of the proposed project.
- The relevant future environmental conditions of the delineated planning area, including the alternative of no action.
- The purpose and need for the project in the planning area, including the existing public health or water quality problems and their severity and extent.
- 4. A comparative analysis of feasible alternatives, including no action, throughout the project area. The comparison shall focus on the beneficial and adverse consequences, both direct and indirect, on the existing environment, the future environment, and individual sensitive environmental issues that are identified by project management or through public participation conducted under this Section. The comparison shall also include an analysis of all of the following factors:
  - a. Land use and other social parameters, including recreation and open-space considerations.
  - Consistency with population projections used to develop state implementation plans under the Clean Air Act (42 U.S.C. 7401 through 7671).
  - Cumulative impacts, including anticipated community growth within the project study area.
  - d. Other anticipated public works projects, including coordination with such projects.
- A full range of relevant impacts of the project, including any irreversible or irretrievable commitments of resources to the project and the relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity.
- 6. Proposed structural and nonstructural measures to mitigate or eliminate adverse effects on the human and natural environments. Among other measures, structural provisions include changes in project design, size, and location; and nonstructural provisions include staging facilities, monitoring and enforcement of environmental rules, and local commitments to develop and enforce land use rules.
- F. Upon completion of the EA required by subsection (E) of this Section, the Authority shall determine whether an environmental impact statement (EIS) is necessary.
  - The Authority shall prepare an EIS pursuant to subsection (G) of this Section if any of the following conditions exist.
    - a. The project is known or expected to have a significant adverse effect on the quality of the human environment, either individually, cumulatively over time, or in conjunction with other federal, state, local, or private actions.
    - b. The project is known or expected to directly or indirectly adversely affect recognized cultural resources, habitats of endangered or threatened species, environmentally important natural resource areas such as floodplains, wetlands, important farmlands, and aquifer recharge zones, or other resource areas.
    - The project is likely to cause significant public controversy or is known or expected not to be cost effective.
    - d. The project discharges into a body of water where the present protected or designated use is not being met or is being challenged as inadequate to protect existing uses, and the discharge will not be of suffi-

- cient quality or quantity to meet the requirements of these uses.
- 2. If the Authority determines pursuant to subsection (F) (1) of this subsection that an EIS is not necessary, the Authority shall issue a finding of no significant impact (FNSI). The FNSI shall be accompanied by the submitted EA with an attached memorandum from the Authority explaining any changes made to the submitted document. Upon issuance of the FNSI, the project may proceed under the other requirements of this Article.
- G. An EIS required by subsection (F)(1) of this Section shall be prepared as follows:
  - The Authority shall 1st prepare and distribute a Notice of Intent.
  - 2. As soon as possible after the publication of the Notice of Intent required by subsection (G)(1), the Authority shall convene a meeting of affected federal, state, and local agencies, affected Indian tribes, the applicant, and other interested parties. At the meeting, the scope of the EIS shall be determined by considering a number of factors, including all of the following:
    - The significant issues to be analyzed in depth in the EIS.
    - The preliminary range of alternatives to be considered.
    - c. The potential cooperating agencies and information or analyses that may be needed from cooperating agencies or other parties.
    - The method for EIS preparation and the public participation strategy.
  - Upon completion of the process described in subsection (G)(2), the Authority shall identify and evaluate all potentially viable alternatives to adequately address the range of issues identified. Additional issues may also be addressed, or others eliminated, and the reasons documented as part of the EIS.
  - After the analysis of issues is conducted pursuant to subsection (G)(3), the Authority shall issue a draft EIS for public comment. Following public comment pursuant to subsection (J), the Authority shall prepare a final EIS, consisting of all of the following:
    - a. The draft EIS.
    - b. Comments received on the draft EIS.
    - c. A list of persons commenting on the draft EIS.
    - The Authority's responses to significant comments received.
    - A determination of consistency with the Certified Water Quality Management Plan, if applicable.
    - f. Any other information added by the Authority.
- H. After a final EIS has been issued under subsection (G) of this Section, the Authority shall prepare and issue a record of decision (ROD) containing the Authority's decision whether to proceed or not proceed with a project. A ROD issued with a decision to proceed shall include mitigation measures derived from the EIS process. A ROD issued with a decision not to proceed shall preclude the project from receiving financial assistance under this Article.
- I. Any project awaiting financial assistance which has a 5- or more year-old categorical exclusion, FNSI, or ROD under this Section shall be subject to an environmental re-evaluation. The Authority shall re-evaluate the project, environmental conditions, and public views and, in writing, either reaffirm or modify its original decision. Any new information used by the Authority in making its determination shall be included.

- J. Public notice and participation under this Section shall be conducted as follows:
  - If a categorical exclusion is granted under subsection (B) of this Section, the Authority shall provide public notice of that fact by publishing the notice as a legal notice at least once, in 1 or more newspapers of general circulation in the county or counties concerned.
  - 2. If a FNSI is issued under subsection (F)(2) of this Section, the Authority shall provide public notice pursuant to R18-1-401(A) that the FNSI is available for public review. The notice shall provide that comments on the FNSI may be submitted to the Authority for a period of 30 days from the date of publication of the notice. If no comments are received, the FNSI shall immediately become effective.
  - If a Notice of Intent is prepared and distributed under subsection (G)(1) of this Section, the Authority shall publish it as a legal notice at least once, in 1 or more newspapers of general circulation in the county or counties concerned.
  - 4. If a draft EIS is issued under subsection (G)(4) of this Section, the Authority shall provide public notice pursuant to A.A.C. R18-1-401(A) that the draft EIS is available for public review. The notice shall provide that comments on the draft EIS may be submitted to the Authority for a period of 30 days from the date of publication of the notice. In addition, if the Authority determines that a project may be controversial, the notice shall provide for a general public hearing to receive public comment pursuant to A.A.C. R18-1-401(B).
  - 5. If the Authority reaffirms or revises a decision pursuant to subsection (I) of this Section, the Authority shall provide public notice of that fact by publishing the notice as a legal notice at least once, in 1 or more newspapers of general circulation in the county or counties concerned.
  - When public notice is required under this subsection, the Authority shall also provide written notice to the applicable Designated Water Quality Management Planning Agency.

### R18-15-108. Readiness to Proceed

- A. The Board shall review each applicant's readiness to proceed with the proposed project.
- B. The Board shall use all of the following readiness criteria to classify projects (the higher the number, the higher the level of readiness):
  - Level 1 The applicant has received authorization to enter into long-term indebtedness.
  - Level 2
    - a. The Board has determined all of the following:
      - Legal capability pursuant to R18-15-103.
      - ii. Financial capability pursuant to R18-15-104.
      - iii. Technical capability pursuant to R18-15-105.
      - Managerial and institutional capability pursuant to R18-15-106.
    - The applicant has completed the requirement for Level 1.
  - 3. Level 3
    - a. The plans and specifications have been reviewed and approved by the Department or the Department's designee.
    - The applicant has completed the requirements for Levels 1 and 2.
  - 4. Level 4 ---

- a. The applicant is in the process of obtaining all applicable permits and approvals required by federal, state, and local authorities.
- b. The applicant has completed the requirements for Levels 1, 2, and 3.
- 5. Level 5
  - a. The applicant has obtained all applicable permits and approvals required by federal, state, and local authorities.
  - b. The applicant has completed the requirements for Levels 1, 2, 3, and 4.
- 6. Level 6 -
  - The applicant has received and accepted bids for the project or, with prior approval from the Board, the applicant has commenced construction.
  - b. The applicant has completed the requirements for Levels 1, 2, 3, 4, and 5.
- C. As applicable, until the environmental review process described in R18-15-107 is completed, the Board shall limit payments of financial assistance to preconstruction activity.
- D. Until all applicable permits and approvals required by federal, state, and local authorities are obtained, the Board shall limit payments of financial assistance to preconstruction activity.
- E. The Board shall bypass a project within a fiscal year and offer funding to the next highest ranking project on the project priority list if either 1 of the following occurs:
  - 1. The Board determines that substantial progress has not been made on a project toward being ready to proceed within 8 months of notification from WIFA that the project is within the fundable range of projects for that fiscal year or:
  - The Board determines that the project will not be ready to proceed within the current fiscal year.

### R18-15-110. Bid Document Review

To ensure compliance with all Arizona statutes and federal requirements for funding the project, the applicant shall submit bid documents for review and comment by the Authority prior to the releasing of the documents to prospective bidders or contractors.

### R18-15-110R18-15-111. Disbursements and Repayments

- A. The Authority shall ensure that disbursements are consistent with the financial assistance agreement and incurred project expenses. Disbursement requests shall be honored if the disbursements are consistent with the financial assistance agreement and they are within 10% of the project dollar disbursement schedule agreed to by both parties at the beginning of the contract or the amended schedule based upon prior Board approval.
- B. The Authority shall charge a late fee for any loan repayment 30 days past the due date and every 30 days thereafter. The authority shall refer any loan repayment over 90 days past due to the Office of the Attorney General for appropriate action pursuant to A.R.S. § 49-375(J).
- C. The recipient shall maintain a project account in accordance with generally accepted government accounting standards. After reasonable notice by the Board, the recipient shall make available any project records reasonably required to determine compliance with the provisions of this Article and the financial assistance agreement.
- D. Each disbursement request shall be on the forms provided by the Authority. Each disbursement request shall include a certification and signature document, a cost incurred report, and a MBE, WBE, SBRA report. All disbursement forms shall be

- completely filled out before the disbursement can be processed by the Authority.
- E. Each disbursement request must include copies of invoices, canceled checks or some document to show proof of payment.
- F. The last substantial reimbursement request for construction funds reimbursement shall not be processed for payment until all required facility permits are in place. The last substantial reimbursement request is defined as follows:
  - 1. 10% of the contract amount on a contract less than \$1,000,000;
  - 5% of the contract amount on a contract greater than or equal to \$1,000,000 and less than \$5,000,000;
  - 2% of the contract amount on a contract greater than or equal to \$5,000,000.

### R18-15-111 R18-15-112. Administration

- A. The Board may use up to 4% of federal capitalization grant awards to pay the reasonable costs of administering the Clean Water Revolving Fund and the Drinking Water Revolving Fund.
- B. The Board may also require a recipient to pay a proportionate share of the expenses of the Authority's operating costs.

### R18-15-112 R18-15-113. Disputes

- A. Any party having a substantial financial interest in or suffering a substantial adverse financial impact from an action taken pursuant to this Chapter may file a formal letter of dispute with the Executive Director. Within 30 days of receipt of a dispute letter, the Authority shall issue a preliminary decision in writing, to be forwarded by certified mail to the party.
- B. Any party filing a dispute pursuant to subsection (A) that disagrees with a preliminary decision of the Authority may file a formal letter of appeal with the Board, provided such letter is received by the Executive Director not more than 15 days after the receipt by the party of the preliminary decision.
- C. The Board shall issue a final decision on issues appealed to it pursuant to subsection (B) not more than 60 days after receipt of the appeal.

### ARTICLE 2: CLEAN WATER REVOLVING FUND

R18-15-203. Clean Water Revolving Fund Intended Use Plan The Board shall publish an Intended Use Plan for each year in which it anticipates that it will provide financial assistance for eligible projects. At a minimum the Intended Use Plan shall identify the projects by eligible applicant, project name, type of project, type of financial assistance, amount of financial assistance, and estimated interest rates to be charged. The Intended Use Plan shall also identify 1st use and equivalency projects. The Intended Use Plan shall be prepared after providing for public comment and review. When an Intended Use Plan is to be submitted as 1 of the documents required to obtain a grant under Title VI of the Clean Water Act (33 U.S.C. 1 1381 through 1387) the Intended Use Plan shall include any additional information required by federal law.

### R18-15-204. Clean Water Revolving Fund Priority List

- A. Each year the Board shall adopt the Priority List for the next twelve month period. The Board shall not adopt a new list for years where funds are not adequate to assist any projects.
- B. When the Priority List is required pursuant to subsection (A), the Board shall rank the projects by priority class (alphabetized with A as the highest priority class), priority points, and year.
- C. An applicant, desiring placement on the Priority List, shall make its request for placement of I or more proposed

- projects on or before a date specified by the Board. When requesting placement on the Priority List, an applicant shall submit information within an application format specified by the Board.
- D. The Board shall prepare a draft Priority List. In developing a draft Priority List, the Board shall consider all requests submitted under subsection (C), all requests made by regulatory authorities, all plans prepared pursuant to the Clean Water Act (33 U.S.C. 1251 through 1387) and the most recently adopted Priority List.
- E. The Board shall hold a public meeting to receive comments on the draft Priority List. The Board shall publish a notice of the public meeting in newspapers statewide at least 21 days prior to the meeting date and make copies of the draft Priority List available to the public at least 14 days prior to the meeting date.
- F. The Board shall consider all comments submitted in writing prior to the meeting, given orally at the meeting, submitted in writing at the meeting, or submitted subsequent to the meeting but prior to the close of the written comment period. The Board shall establish a written comment period and shall publish the date upon which the comment period closes in the meeting notice. The Board shall summarize all of the comments received, prepare responses, and adopt the Priority List to be used to administer the Clean Water Revolving Fund during the following fiscal year.
- G. The Board shall make additions or modifications to the Priority List when all 1 or more of the following conditions are is met:
  - The project meets the criteria for Priority Class A specified in R18-15-205(B).
  - Funds are available to cover the cost of the project and to honor funding commitments made to other projects or needed to support financial arrangements made to sell bonds for the state match.
  - The additions or modifications are made by the Board at a public meeting.
  - Additional funds are made available.
- H. After an opportunity for public comment at a public meeting, the Board may remove a project from the Priority List under any 1 of the following circumstances:
  - 1. The project has received all financial assistance from the fund requested by the applicant.
  - The project has been financed with long-term indebtedness from another source.
  - 3. The project is no longer an eligible project.
  - 4. The applicant requests removal.
- I. The Board shall retain a project on the Priority List in its assigned priority ranking if it is bypassed pursuant to R18-15-202(C).

# R18-15-206. Clean Water Revolving Fund Priority List Ranking Criteria

- A. The Board shall rank projects within priority classes using priority values obtained from the following formula:
  - PV = VF + TD + CL + CW + CI + LFC + PYF + CR where:

PV = Priority Value

VF = Violation Factor

TD = Treatment and Disposal

CL = Collection Lines

CW = Classification of Waters

CI = Conservation Index

LFC = Local Fiscal Capacity

PYF = Prior Year Funding

CR = Consolidation and Regionalization

- B. Violation Factor (VF) -- Whenever the Board determines that a project seeks to correct a violation of a water quality standard or a violation of a condition contained in a valid water quality permit issued by a regulatory authority, the Board shall award VF points. The Board shall use information from documents obtained under R18-15-205(B) and R18-15-205(D) to assign VF points. VF points are awarded as follows up to a maximum of 100 points:
  - 40 points for nitrates, disease organisms or indicators, or conditions which create a threat to an endangered species.
  - 30 points for pathogens, heavy metals, and volatile organic compounds (VOCs).
  - 20 points for biochemical oxygen demand (BOD), suspended solids, or phosphates.
  - 4. 10 points for pH, turbidity, or temperature.
- C. Treatment and Disposal (TD) -- If an applicant is seeking financial assistance to construct, upgrade, or rehabilitate a treatment or disposal process, the Board shall award TD points up to a maximum of 30 points with only 1 set of points awarded as follows:
  - 30 points to provide additional treatment capacity to meet existing need.
  - 30 points to construct new treatment capacity for an unsewered area.
  - 3. 25 points to provide additional disposal capacity.
  - 20 points to upgrade treatment facilities to more stringent standards.
  - 5. 15 points to remedy existing design inadequacies.
  - 10 points for projects which will resolve existing operation and maintenance violations.
  - 5 points for projects which will expand treatment capacity to accommodate future growth.
- D. Collection Lines (CL) -- If an applicant is seeking financial assistance for a collection line project, the Board shall award CL points up to a maximum of 30 points with only 1 set of points awarded as follows:
  - 30 points to extend service to an existing unsewered area where a documented water quality standard violation exists
  - 25 points to repair, rehabilitate or replace existing collection lines.
  - 20 points to extend service to an existing unsewered area.
  - 15 points to replace collection lines to accommodate existing growth.
  - 5 points to install new collection lines to accommodate future growth.
- E. Classification of Waters (CW) -- The Board shall award points for either surface water or groundwater categories but not both. The most stringent protected use within each category shall be the sole determiner of the CW points. CW points are awarded as follows up to a maximum of 30 points:
  - For surface water, CW points shall be awarded for discharges into a water body assigned 1 of the following protected use classifications under R18-11-101:
    - a. 30 points for "full body contact" or "domestic water source." For purposes of this subsection, a project that is not within either of those classifications may receive 30 points if the discharge is into a water body classified as a "unique water" defined in R18-11-101.
    - 20 points for "aquatic and wildlife--(cold water fishery)".

- c. 15 points for "aquatic and wildlife" that is not a cold water fishery.
- d. 10 points for "incidental human contact".
- For groundwater, CW points shall equal 30 points for discharges into an aquifer.
- F. Conservation Index (CI) -- The Board shall award Conservation Index points up to a maximum of 45 points as follows:
  - 30 points if the project will reclaim, reuse, or recharge at least 51% of treated wastewater consistent with state law.
  - 15 points if the project will productively recycle wastewater constituents.
  - 0 points if the project will not reclaim, reuse, or recharge wastewater.
- G. Local Fiscal Capacity (LFC) -- The Board shall award LFC points up to a maximum of 100 points as follows:
  - Median Household Income (MHI) -- The Board shall divide the MHI from the area served by the applicant by the state's MHI (Service Area MHI/State MHI) to award points as follows:
    - 40 points if the area's MHI is less than 25% of the State's MHI.
    - 30 points if the area's MHI is between 25% and 50% of the State's MHI.
    - 20 points if the area's MHI is between 51% and 75% of the State's MHI.
    - d. 10 points if the area's MHI is between 76% and 100% of the State's MHI.
    - e. 0 points if the areas's MHI is more than 100% of the State's MHI.
  - User Fees -- The Board shall divide the applicant's proposed residential user fees, rates, and charges by the service area's MHI (Proposed User Fees, Rates and Charges/Area MHI) to award points as follows:
    - a. 20 points if the rates are more than 2% of the area's MHI.
    - b. 10 points if the rates are between 1% and 2% of the area's MHI.
    - c. 0 points if the rates area is less than 1% of the area's MHI.
  - Investment -- The Board shall divide existing indebtedness, existing investments, and proposed indebtedness by the service area's MHI (Investment/ Area MHI) to award points as follows:
    - a. 20 points if the existing and proposed investment is more than 1% of the area's MHI.
    - b. 10 points if the existing and proposed investment is between .5% and 1% of the area's MHI.
    - c. 0 points if the existing and proposed investment is less than .5% of the area's MHI.
  - 4. Cost Effectiveness (CE) -- The Board shall divide the estimated costs of construction by the number of benefitting connections (Construction Costs/# of Benefitting Connections) to award points as follows:
    - a. 20 points if CE is less than \$2,500 per benefitting connection.
    - b. 10 points if CE is between \$2,500 and \$5,000 per benefitting connection.
    - 0 points if CE is more than \$5,000 per benefitting connection.
- H. Prior Year Funding (PYF) -- The Board shall award PYF points up to a maximum of 30 points with only 1 set of points awarded as follows:
  - 30 points if the applicant requests additional financial assistance for a multi-year construction project which

- received financial assistance from the Authority in a previous fiscal year.
- 20 points if the applicant requests additional financial assistance to offset actual costs or justified overruns.
- 10 points if the applicant requests financial assistance to construct a project which received planning and design financial assistance from the Authority in a previous fiscal year.
- -10 points if the applicant requests financial assistance to offset cost overruns.
- Consolidation & Regionalization (CR) -- The Board shall award CR points up to a maximum of 50 points as follows:
  - 20 points if the applicant is consolidating the physical facilities of existing multiple facilities.
  - 20 points if the applicant is extending service to existing areas currently served by another facility.
  - 5 points if the applicant is consolidating the operations of existing multiple facilities.
  - 5 points if the applicant is consolidating the ownership of existing multiple facilities.
- J. The Board may use the most recent United States census data to determine the applicant's and the state's median household income. If the Board or the applicant determines that this data is insufficient, the applicant shall use a reliable and impartial entity to conduct an income survey of the applicant's service area. If the applicant's service area is included in more than one income area, the Board may use an average of income areas to define the service area's median household income.
- K. After scoring within each class, tied scores shall be ranked by placing the lowest cost effectiveness ratio project above all other tied projects in the class. The cost effectiveness ratio means the project dollars per benefitting connection.

### R18-15-207. Project Construction

- A. The Department shall not issue an Approval to Construct to an applicant or recipient until all of the following have occurred:
  - 1. An on-site inspection by the Department.
  - The development by the applicant or recipient of a sludge management use and disposal plan.
  - A review of all set-back requirements by the Department.
  - WIFA may withhold all construction funding until the Department issues an approval to construct for the applicant.
- B. Prior to awarding contracts for construction associated with the project, the applicant or recipient shall demonstrate all of the following:
  - 1. All easements and rights-of-way have been obtained.
  - All contracts, subagreements, and force account work are consistent with the Arizona Procurement Code, A.R.S. §§ 41-2501 et seq.
  - All required approvals and permits have been obtained from the following entities:
    - a. The Department including the requirements contained in 18 A.A.C. 9.
    - Applicable federal, state, and local authorities as related to:
      - i. Leases.
      - ii. Zoning permits.
      - iii. Building permits.
      - iv. Flood plain approvals.
      - v. Air quality permits.
      - vi. Solid waste approvals.
- C. During construction of wastewater treatment facilities, the recipient shall do all the following:

- Conduct work in compliance with the requirements of 18 A.A.C. 9.
- Employ a qualified, registered, professional engineer to directly supervise construction management and inspection.
- D. Upon project completion, all of the following requirements shall be satisfied:
  - The project shall receive a final inspection and obtain all certifications and approvals required by 18 A.A.C. 9.
  - 2. The recipient shall accept the project in writing.
  - Any required operation and maintenance manual shall be completed.
  - As-built plans and specifications shall be submitted to the Authority and the recipient.
- E. Within 1 year after project completion, the recipient shall certify that the wastewater treatment facility meets design specifications and all effluent limitations. If the recipient is unable to submit the required certification, the recipient shall submit a corrective action plan. This plan shall describe why the wastewater treatment facility does not meet design standards or effluent limits and what will be done to correct the deficiency, together with a schedule for the corrective actions.

### ARTICLE 3: DRINKING WATER REVOLVING FUND

### R18-15-304. Drinking Water Revolving Fund Priority List

- A. Each year the Board shall adopt the Priority List for the next 12-month period. The Board shall not adopt a new list for years when funds are not adequate to assist any projects.
- B. When the Priority List is required pursuant to subsection (A), the Board shall rank the projects by priority class (alphabetized with A as the highest priority class), priority points, and year.
- C. An applicant desiring placement on the Priority List shall make its request for placement of 1 or more proposed projects on or before a date specified by the Board. When requesting placement on the Priority List, an applicant shall submit information within an application format specified by the Board.
- D. The Board shall prepare a draft Priority List. In developing a draft Priority List, the Board shall consider all requests submitted under subsection (C), all requests made by regulatory authorities, all plans prepared pursuant to the Safe Drinking Water Act 42 U.S.C. §§ 300f to 300j-25, and the most recently adopted Priority List.
- E. The Board shall hold a public meeting to receive comments on the draft Priority List. The Board shall publish a notice of the public meeting in newspapers statewide at least 21 days prior to the meeting date and make copies of the draft Priority List available to the public at least 14 days prior to the meeting date.
- F. The Board shall consider all comments submitted in writing prior to the meeting, given orally at the meeting, submitted in writing at the meeting, or submitted subsequent to the meeting but prior to the close of the written comment period. The Board shall establish a written comment period and shall publish the date upon which the comment period closes in the meeting notice. The Board shall summarize all of the comments received, prepare responses, and adopt the Priority List to be used to administer the Drinking Water Revolving Fund during the following fiscal year.
- G. The Board shall make additions or modifications to the Priority List when all 1 or more of the following conditions are is met:

- The project meets the criteria for Priority Class A specified in R18-15-305(B) and funds are available to cover the cost of the project and to honor funding commitments made to other projects.
- The additions or modifications are made by the Board at a public meeting.
- Additional funds are made available.
- H. After an opportunity for public comment at a public meeting, the Board may remove a project from the Priority List under any 1 of the following circumstances:
  - The project has received all financial assistance from the fund requested by the applicant.
  - The project has been financed with long-term indebtedness from another source.
  - 3. The project is no longer an eligible project.
  - 4. The applicant requests removal.
- The Board shall retain a project on the Priority List, and work with each system in its assigned priority ranking if it is bypassed pursuant to R18-15-302(C).

# R18-15-305. Drinking Water Revolving Fund Priority Classes

- A. The Board shall evaluate each project on the Priority List and place it into a priority class. The Board may place major portions of a project into different priority classes. The Board shall consider separation of a project into different priority classes when requested by the applicant or when the Board determines that available funds are inadequate to provide assistance to projects critical to the public health or to water quality. The Board may re-evaluate project priority classes under R18-15-304(G) if supported by information such as facility plans, feasibility studies, enforcement actions, and environmental reviews conducted under R18-15-107. If the Board determines that the problem being addressed by a project can be corrected by proper operation and maintenance of existing facilities, the project is ineligible for financial assistance.
- B. Class A -- The Board may designate a project as Priority Class A if continuous or intermittent violations of the national primary drinking water standards exist involving acutely toxic contaminants. The violations shall be documented by official reports, data, or findings of a regulatory authority. Corrective action or mitigation measures shall be initiated and evidenced by 1 or more of the following:
  - An administrative order issued by a regulatory authority.
  - 2. A court order or decision.
  - A voluntary compliance agreement with a regulatory authority
  - The implementation of a corrective action plan by a regulatory authority, which may include restrictions on construction, connections, or development.
  - A voluntary corrective action plan with a regulatory agency implemented by the applicant and evidenced by restrictions or moratoriums.
- C. Class A: Continuing Construction Projects -- In addition to R18-15-305(B), the Board may designate a project as Priority Class A if the project received funding in a prior fiscal year, the Board entered into a multi fiscal year funding commitment with the applicant, the Board designated the project as Priority Class A. Priority Class B, or Priority Class C in a prior fiscal year, and the project received at least 20 points under R18-15-306(E) R18-15-306(H).
- D. Class B The Board may designate a project as Priority Class B if a violation of the national primary drinking water standards involves non-acutely toxic contaminants documented

by official reports, data, or findings of a regulatory authority and corrective action or mitigation measures have been initiated as evidenced by 1 or more of the following:

- An administrative order issued by a regulatory authority.
- A court order or decision.
- A voluntary compliance agreement with a regulatory authority.
- The implementation of a corrective action plan by a regulatory authority, which may include restrictions on construction, connections, or development.
- A voluntary corrective action plan with a regulatory authority implemented by the applicant and evidenced by restrictions or moratoriums.
- E. Class C The Board may designate a project as Priority Class C if the goal of the project is to upgrade or rehabilitate existing delivery capability or existing facility design in accordance with the Safe Drinking Water Act Amendments for all drinking water facilities that have violations in the water system physical plant.
- F. Class D The Board may designate a project as Priority Class
  D if the goal of the project is to upgrade or rehabilitate existing delivery capability or existing facility design in accordance with the Safe-Drinking Water Act Amendments for all
  drinking water facilities that require rehabilitation or
  upgrades that are not a result of violations.
- FG. Class DE The Board may designate a project as Priority Class DE if the goal of the project is to consolidate or regionalize service of previously separate drinking water facilities.
- GH. Class EF The Board may designate a project which does not receive a designation pursuant to subsections (B) through (E) of Class A through Class E, as Priority Class EF.

# R18-15-306. Drinking Water Revolving Fund Priority List Ranking Criteria

A. The Board shall rank projects within priority classes using priority values obtained from the following formula:

PV = HC + CFS ARD + TUE + DS + SF + LFC + PYF + CR where:

PV = Priority Value

HC = Health Criteria

CFS - Condition of Facilities and Sources

ARD =Acquiring, Rehabilitating or Developing Sources

TUE = Treatment Upgrade or Treatment Expansion

DS = Distribution System

SF = Storage Facility

LFC = Local Fiscal Capacity

PYF = Prior Year Funding

CR = Consolidation and Regionalization

- B. Health Criteria (HC) -- Whenever the Board determines that a project seeks to correct a violation of the national primary drinking water standards, the Board shall award HC points. The Board shall use information from documents obtained under R18-15-305(B) and R18-15-305(D) to assign HC points. The Board shall award HC points up to a maximum of 100 points with only 1 set of points awarded as follows:
  - 100 points for continuous violations of the national primary drinking water standards involving acutely toxic contaminants.
  - 80 points for intermittent violations of the national primary drinking water standards involving acutely toxic contaminants.
  - 60 points for continuous violations of the national primary drinking water standards involving non-acutely toxic contaminants.

- 40 points for intermittent violations of the national primary drinking water standards involving non-acutely toxic contaminants.
- C. Condition of Facility and Source (CFS) If an applicant is seeking financial assistance to construct, upgrade, or rehabilitate Acquiring. Rehabilitating or Developing Sources of a drinking water facility (ARD) —, the The Board shall award CFS ARD points up to a maximum of 125 50 points as follows:
  - 20 points to secure at least 51% of new eligible source capacity with a renewable source or 10 points to secure at least 51% of new eligible source capacity with a nonrenewable source.
  - Acquire, rehabilitate or develop a water source to serve the following for a maximum of 30 points:
    - 30 points to serve current service area because the current source is contaminated or depleted.
    - b. 15 points to serve expanded service area because the new area has contaminated or insufficient water.
    - c. 5 points to serve future growth.
    - 20 points to secure at least 51% of new eligible source capacity with a renewable source or 10 points to secure at least 51% of new eligible source capacity with a non-renewable source.
  - 20 points to construct, upgrade, or rehabilitate a component of the water treatment facility, other than disinfection equipment.
  - 20 points to upgrade or rehabilitate capacity of an existing eligible storage, pumping, or distribution facility.
  - 20 points to upgrade or rehabilitate existing, required disinfection equipment.
  - 5. 15 points to protect an existing water source from an existing or future contamination threat, the project having been funded under 42 U.S.C. § 300j.
  - 15 points to upgrade or rehabilitate an existing well or spring box.
  - 10-points to repair an existing transmission or distribution system.
  - 5 points to reduce a taste, odor or corrosion problem at an existing facility.
- D. Treatment Upgrade (either surface water or ground water but not both) or Treatment Expansion (excluding Upgrade and Expand) (TUE) -- The Board shall award TUE points up to a maximum of 30 points as follows:
  - Treatment Upgrade of either surface or ground water by 1 of the following methods for a total of 30 points;
    - <u>Upgrade surface water by 1 of the following methods:</u>
      - i. 30 points for treatment of micro-organisms.
      - 20 points for treatment of chemical constituents that would be harmful if people are exposed to them.
      - iii. 10 points for treatment of chemical constituents that are not harmful if people are exposed to them.
    - <u>Upgrade ground water by 1 of the following methods:</u>
      - 30 points for treatment with chlorination.
      - ii. 20 points for treatment of chemical constituents that would be harmful if people are exposed to them.
      - 10 points for treatment of chemical constituents that are not harmful if people are exposed to them.

- E. <u>Distribution System (DS) -- The Board shall award DS points up to a maximum of 30 points by 1 of the following methods:</u>
  - 30 points maximum for rehabilitation, replacement or repair of existing lines with inadequate line size or inadequate pressure by 1 of the following methods
    - a. 30 points for service to an existing service area.
    - b. 25 points for service to an expanded service area where the new area has poor quality water,
    - 2. 10 points for service for current growth.
    - d. 5 points for service for future growth.
  - 30 points maximum for the rehabilitation, replacement or repair of existing lines by 1 of the following methods:
    - 30 points for leaks.
    - b. 25 points for wrong materials or inadequate design.
    - c. 20 points for insufficient depth of lines.
  - 25 points maximum for the installation of new lines by I of the following methods:
    - a. 25 points to install new lines to loop an existing service area.
    - 25 points to install new lines to service an existing service area.
    - <u>c.</u> 20 points to install new lines to service an expanded service area because the new area has poor quality water,
    - d. 10 points to install new lines to service current growth.
    - e. 5 points to install new lines to service future growth.
  - 30 points maximum to rehabilitate, replace or repair a hydropneumatic tank.
    - a. 30 points for a hydropneumatic tank that serves an existing service area.
    - b. 25 points for a hydropneumatic tank that serves an expanded service area, and
    - c. 20 points for a hydropneumatic tank that serves current growth.
- F. Storage Facility (SF) -- The Board shall award SF points up to a maximum of 30 points by 1 of the following methods:
  - 30 points for no storage, and
  - 25 points maximum to rehabilitate storage or inadequate storage or inadequate pressure by 1 of the following methods:
    - a. 25 points for inadequate design of the storage facility.
    - b. 20 points for service to an existing area,
    - c. 15 points for service to an expanded area because the new area has poor quality water.
    - d. 10 points for service for current growth, and
    - e. 5 points for service for future growth.
  - 25 points maximum for expanded storage by 1 of the following methods:
    - a. 25 points for service to an existing area.
    - b. 20 points for service to an expanded area because the new area has poor quality water.
    - c. 10 points for service for current growth, and
    - d. 5 points for service for future growth.
- DG. Local Fiscal Capacity (LFC) -- The Board shall award LFC points up to a maximum of 100 points as follows:
  - Median Household Income (MHI) -- The Board shall divide the MHI from the area served by the applicant by the state's MHI (Service Area MHI/State MHI) to award points as follows:
    - 40 points if the area's MHI is less than 25% of the State's MHI.

- 30 points if the area's MHI is between 25% and 50% of the State's MHI.
- 20 points if the area's MHI is between 51% and 75% of the State's MHI.
- d. 10 points if the area's MHI is between 76% and 100% of the State's MHI.
- e. 0 points if the areas's MHI is more than 100% of the State's MHI.
- User Fees -- The Board shall divide the applicant's proposed user fees, rates, and charges by the service area's MHI (Proposed User Fees, Rates and Charges/Area MHI) to award points as follows:
  - a. 20 points if the rates are more than 2% of the area's MHT.
  - 10 points if the rates are between 1% and 2% of the area's MHI.
  - 0 points if the rates area less than 1% of the area's MHI.
- Investment -- The Board shall divide existing indebtedness, existing investments, and proposed indebtedness by service area's MHI (Investment/ Area MHI) to award points as follows:
  - a. 20 points if the existing and proposed investment is more than 1% of the area's MHI.
  - b. 10 points if the existing and proposed investment is between .5% and 1% of the area's MHI.
  - c. 0 points if the existing and proposed investment is less than .5% of the area's MHI.
- Cost Effectiveness (CE) -- The Board shall divide the estimated costs of construction by the number of benefitting connections (Construction Costs/# of Benefitting Connections) to award points as follows:
  - a. 20 points if CE is less than \$2,500 per benefitting connection;
  - 10 points if CE is between \$2,500 and \$5,000 per benefitting connection; and
  - 0 points if CE is more than \$5,000 per benefitting connection.
- **EH.** Prior Year Funding (PYF) -- The Board shall award PYF points up to a maximum of 30 points with only 1 set of points awarded as follows:
  - 30 points if the applicant requests additional financial assistance for a multi-year construction project which received financial assistance from the Authority in a previous fiscal year.
  - 20 points if the applicant requests additional financial assistance to offset actual costs or justified overruns.
  - 10 points if the applicant requests financial assistance to construct a project which received planning and design financial assistance from the Authority in a previous fiscal year.
  - 4. -10 points if the applicant requests financial assistance to offset cost overruns.
- FI. Consolidation & Regionalization (CR) -- The Board shall award CR points up to a maximum of 50 points as follows:
  - 1. 20 points if the applicant is consolidating the physical facilities of existing multiple facilities.
  - 2. 20 points if the applicant is extending service to existing areas currently served by another facility.
  - 3. 5 points if the applicant is consolidating the operations of existing multiple facilities.
  - 5 points if the applicant is consolidating the ownership of existing multiple facilities.
- GJ. The Board may use the most recent United States census data to determine the applicant's and the state's median household

- income. If the Board or the applicant determines that this data is insufficient, the applicant shall use a reliable and impartial entity to conduct an income survey of the applicant's service area. If the applicant's service area is included in more than one income area, the Board may use an average of income areas to define the service area's median household income.
- K. After scoring within each class, tied scores shall be ranked by placing the lowest cost effectiveness ratio project above all other tied projects in the class. The cost effectiveness ratio means the project dollars per benefitting connection.

### R18-15-307. Project Construction

- A. The Department shall not issue an Approval to Construct to an applicant or recipient until the Department has conducted an on-site inspection. WIFA shall withhold all construction funding until the Department issues an approval to construct for the applicant.
- B. Prior to awarding contracts for construction associated with the project, the applicant or recipient shall demonstrate all of the following:
  - 1. All easements and rights-of-way have been obtained.
  - All contracts, subagreements, and force account work are consistent with the Arizona Procurement Code, A.R.S. § 41-2501 et.seq.
  - All required approvals and permits have been obtained from the following entities:
    - The Department including the requirements contained in 18 A.A.C. 4.
    - Applicable federal, state, and local authorities as related to:
      - i. Leases,
      - ii. Zoning permits,
      - iii. Building permits,
      - iv. Flood plain approvals,
      - v. Air quality permits, and
      - vi. Solid waste approvals.
- C. During construction of drinking water facilities, the recipient shall do all of the following:
  - 1. Conduct work in compliance with the requirements of 18 A.A.C. 4.
  - Employ a qualified, registered, professional engineer to directly supervise construction management and inspection.
- D. Upon project completion, all of the following requirements shall be satisfied:
  - The project shall receive a final inspection and obtain all certifications and approvals required by 18 A.A.C. 4.
  - 2. The recipient shall accept the project in writing.
  - Any required operation and maintenance manual shall be completed.
  - 4. As-built plans and specifications shall be submitted to the Authority and the recipient.
- E. Within I year after project completion, the recipient shall certify that the project meets design specifications. If the recipient is unable to submit the required certification, the recipient shall submit a corrective action plan. This plan shall describe why the project does not meet design standards and what will be done to correct the deficiency, together with a schedule for the corrective actions.

### ARTICLE 4: OTHER FINANCIAL ASSISTANCE

### R18-15-403. Project Construction

A. Construction of a project shall conform to all of the requirements found in this Section.

- B. The Department shall not issue an Approval to Construct to an applicant or recipient until the Department has conducted an on site inspection. If applicable, WIFA shall withhold all construction funding until the Department issues an approval to construct for the applicant.
- C. Prior to awarding contracts for construction associated with the project, the applicant or recipient shall demonstrate all of the following:
  - 1. All easements and rights-of-way have been obtained.
  - All contracts, subagreements, and force account work are consistent with the Arizona Procurement Code, A.R.S. §§ 41-2501 et seq.
  - All required approvals and permits have been obtained from the following entities:
    - a. The Department including the requirements contained in 18 A.A.C. 4 or 18 A.A.C. 9, as applicable.
    - Applicable federal, state, and local authorities as related to:
      - i. Leases,
      - ii. Zoning permits,
      - iii. Building permits,
      - iv. Flood plain approvals,
      - v. Air quality permits, and
      - vi. Solid waste approvals.

- D. During construction of the project, the recipient shall do all the following:
  - Conduct work in compliance with the requirements of 18 A.A.C. 4 or 18 A.A.C. 9, as applicable.
  - Employ a qualified, registered, professional engineer to directly supervise construction management and inspection.
- E. Upon project completion, all of the following requirements shall be satisfied:
  - The project shall receive a final inspection and obtain all certifications and approvals required by 18 A.A.C. 4 or 18 A.A.C. 9, as applicable.
  - 2. The recipient shall accept the project in writing.
  - Any required operation and maintenance manual shall be completed.
  - As-built plans and specifications shall be submitted to the Authority and the recipient.
- F. Within 1 year after project completion, the recipient shall certify that the project meets design specifications. If the recipient is unable to submit the required certification, the recipient shall submit a corrective action plan. This plan shall describe why the project does not meet design standards and what will be done to correct the deficiency, together with a schedule for the corrective actions.